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CITY OF BURLINGTON, VERMONT
OFFICE OF
THE CITY ATTORNEY
AND
CORPORATION COUNSEL

MEMORANDUM

To: Mayor Miro Weinberger and City Council
From: Eileen Blackwood, Burlington City Attorney
Date: January 1, 2020
Re: Burlington International Airport and Regional Governance Questions

I. Introduction

This memorandum is to provide the mayor and city council with information related to concerns that have been raised about the governance of the Burlington International Airport (“the Airport” or “BIA”). To provide context for those issues, this memorandum identifies some of the City of Burlington’s taxpayers’ major investments into the Airport and where the Airport is today. It also summarizes research on possible and “best” airport governance structures (municipal, county, state, port authority, airport authority, etc.), potential governance transition issues, reasons for and against change, and recommendations for possible adjustments to address concerns.

II. Executive Summary

A. The history of the Burlington International Airport reveals substantial investment into and support of the airport by Burlington taxpayers over the ninety-nine years¹ since it was dedicated. While much of Burlington’s investment occurred in the first 30 years of the Airport’s history, indirect support continues to this day, as the city supports long-term debt of the Airport with pledges of the full faith and credit of the city, and the Airport continues to receive value from the support and cooperation of other city departments and

¹ The Airport will be celebrating its 100th birthday in August 2020.

elected officials. The City of Burlington's investments over the years include work by the Burlington streets department to construct and maintain the runways, acquisition of property and later additional property on which the airport lies, purchase of a hangar, construction of the initial administration building, involvement of the Burlington city engineer and city attorney in the acquisition of property and construction of buildings, maintenance of employee benefits, maintenance of the citywide employee pension plan, human resources support, union contract bargaining and management, snow removal by the streets department, city administrative and financial management support, oversight by the mayor and city council, improvements to parking facilities, investments by the Burlington Community Development Corporation, and pledges of Burlington's full faith and credit to secure debt obligations.

B. Under Burlington's governance and operational support, the Airport has continued to thrive, serving more than 1.3 million passengers in 2018 and contributing more than \$480,000,000 to the regional economy. From its initial 72 acres, it has increased in size to almost 942 acres. Including its current asset value, the Airport is estimated to have a value to the region of \$1.04 billion.

C. While the details of governance models vary, BIA's current governance structure—a municipal department within a general government entity operating as a separately-reported enterprise fund—is a widely accepted and reasonable governance model, squarely within the range of the municipally owned models adopted by about half of the airports in the country. Almost all of these municipally owned and operated airports were founded by the municipality and have remained in municipal ownership throughout their history (excluding during wartime when federal authorities may have taken them over).

Other types of ownership include regional airport authorities (which often operate multiple airports), port authorities (which may govern several types of transportation), individual airport authorities (which operate a single airport), or private ownership. These authorities are governed by boards whose members may be appointed in a number of different ways—for example, by the mayor of one or several cities, by the legislative body of a single or multiple municipalities or counties, or by the governor of a state.

D. All airport governance models have strengths and weaknesses, and studies of their effectiveness generally have not suggested that one model of airport governance constitutes the “best practice.” There are too many differences among airports to generalize a single best model. How successful an airport is depends on many factors outside the control of the airport from economic climate to geography to airline operations.

Typically, airports have maintained the ownership and operational governance with which they were founded, as the costs of change are high. Transferring ownership, governance, or operations away from the current municipal structure would entail significant transition issues, including transition of staffing, assumption of current debt (including employee pension obligations), ownership of assets, and Federal Aviation Administration authority questions. Changes of ownership and operational governance occur for compelling reasons, usually because an airport is failing or in need of considerable improvement that the current owner cannot provide. Proponents of authority, as opposed to municipal, structures have generally maintained that the authority can operate at a lower cost by reducing political involvement and running the airport more like a business, but these concerns can be addressed within the existing structure.

E. As sponsor of the Airport and holder of the airport certificate from the FAA, Burlington is responsible for determining the airport’s appropriate governance and operation and for the content of all grant applications. Millions of dollars of capital expenditures in recent years have come from federal grants by the Federal Aviation Administration, which issues the operating certificates to airports in the US and sets certain requirements for airport sponsors and certificate holders. Given the decades of unreimbursed investment by Burlington taxpayers during the first half of its history and the continued pledge of Burlington’s full faith and credit for tens of millions of dollars of debt during the modern era, Burlington would have ample justification to seek millions of dollars of reimbursement in the event of a transfer of ownership to another entity. As the example of Charlotte-Douglas airport has shown, without the concurrence of Burlington, a transfer of actual airport operations to a regional authority would be difficult, as Burlington is the FAA sponsor and certificate holder.

F. To address concerns raised by South Burlington and Winooski representatives without risking the disruption and cost of complete restructuring, the City of Burlington could explore more targeted changes within the current structure. For example, the addition of a Winooski representative to the Airport Commission could be considered. This would be accomplished by a change to the Burlington City Charter, which establishes the Airport Commission and details its makeup. Airport staff recommend not changing the current governance structure of the Airport and encourage substantial exploration before making changes that may disrupt the Airport’s current successful trends.

III. History of the Burlington International Airport and the City of Burlington’s Investments in the Airport

In 2010, James Tabor wrote a comprehensive history of the Burlington International Airport. According to Tabor, on July 3, 1919, Mason Bebe (an accomplished pilot who landed a plane in Burlington Harbor), future Mayor John Burns, and James Taylor drove to and inspected a 72 acre cornfield in the adjacent town of South Burlington, which they all agreed would have potential as an airfield.² South Burlington had broken away from Burlington in 1865 when Burlington was chartered, although South Burlington did not become a city until 1971.³ At the time, it was common for local governments to acquire vacant property to construct public airports.⁴

Bebe, Burns, and Taylor leased the field for \$100 for the first year and commenced runway construction using the City of Burlington Streets Department’s horse-drawn road grader

² James Tabor, *Burlington International Airport, A History 1920–2010*, pp. 22–23, 26 (2010). See also 24 V.S.A. app. ch. 3 § 1 (Burlington city charter); Burlington, VT, *Redistricting History*, available at: www.burlingtonvt.gov/CityCouncil/Redistricting-History (last visited Nov. 11, 2019).

³ 24 V.S.A. app. ch. 3 § 1; 24 V.S.A. app. ch. 13 § 101 (South Burlington city charter); Burlington, VT, *Redistricting History*, *supra*; see also South Burlington, VT, *Water Department History*, available at: www.southburlingtonvt.gov/departments/water_department/index.php (last visited Nov. 11, 2019); South Burlington, VT, *City Charter & Ordinances*, available at: http://www.southburlingtonvt.gov/government/city_charter_and_ordinances.php (last visited Nov. 11, 2019).

⁴ Daniel S. Reimer & John E. Putnam, *Airport Governance and Ownership*, National Academy of Sciences, p. 3 (2009), available at: <https://www.nap.edu/catalog/23010/airport-governance-and-ownership> (last visited Nov. 11, 2019).

and steam roller.⁵ The first recorded landing occurred on August 14, 1920.⁶ At the dedication ceremony on September 21, 1921 there were “[n]o fewer than 3,000 onlookers . . . to admire the ‘L-shaped field, admirably fitted for aviation purposes. It is perfectly level, well drained, and has been smoothed by the steam roller of the Burlington Street Department, so that the surface is perfectly adapted for the landing of planes in all weathers.’”⁷

According to Tabor and the Annual Reports from the time, the Airport continued to expand over the next five years as the Burlington Streets Department cleared trees, graded the dirt strips, erected the first landing beacon (a circle with an approximately 200 foot diameter), and generally improved the airfield.⁸ All of this work appears to have been performed by the City Street Department and paid for by Burlington taxpayers. In 1927 the receipts, disbursements, expenditures and appropriations for the Airport begin to appear in the City’s Annual Report,⁹ and the first reference to reimbursement by the Airport is for the year ending December 31, 1929.¹⁰

A. *The Board of Airport Commissioners and the Airport’s first tenants*

⁵ Tabor, *supra* note 2, at pp. 26–27 (Tabor does not specify whether this was a personal lease or a City lease and there is no mention of the transaction in the 1919 or 1920 Annual Reports for the City of Burlington. Tabor does cite to a 1946 document prepared by then-City Engineer George Stanley that laid out “‘a chronological report of the purchase, development, maintenance, and operating costs for the Burlington Municipal Airport,’” which, according to this report, “‘began in 1920 when a little scarifying and leveling of a small area was accomplished by the use of the Street Department’s horse-drawn road grader and the surface was rolled with the Street Department’s steam roller.’”); *see also* Fifty-Sixth Annual Report of the City of Burlington, Vermont For the Year Ending December 31, 1920 at pp. 149–56 (There is no mention of the use of the Street Department’s equipment to construct the runway, but that usage might not have been delineated in the “Distribution of Expenditures,” and the Superintendent of Streets did not include a summary of work done by the Streets Department prior to May 1, 1920, when he assumed the position, in his annual report.).

⁶ Tabor, *supra* note 2, at p. 27.

⁷ Tabor, *supra* note 2, at pp. 30–31 (quoting the September 23, 1921 issue of the Boston Evening Transcript).

⁸ *Id.* at pp. 31–32, 82–83; Sixty-Third Annual Report of the City of Burlington, Vermont, For the Year Ended December 31, 1927 at p. 237 (“The work on the Aviation Field was done by the Street Department under a special appropriation for this work. This work included the clearing of the trees and removing the stumps of numerous trees located at the central part of the landing field, the laying out of the circle and the erection of a cone, also a small amount of grading. It is expected that the Street Department will also clear a section of the wooded lands during the coming winter months and thus add to the landing facilities of the Aviation Field.”); Sixty-Fourth Annual Report of the City of Burlington, Vermont, For the Year Ended December 31, 1928 at p. 242 (“A considerable amount of work was done by the Street Department in developing the Burlington Municipal Airport. Two runways were developed by plowing, harrowing, leveling, smoothing, seeding and rolling the area to be used as runways.”); Sixty-Fifth Annual Report of the City of Burlington, Vermont For the Year Ended December 31, 1929 at pp. 15–16, 239 (“Although a separate department has been appointed to handle the Municipal Airport, the actual work of developments has mostly been done with Street Department forces and equipment under the direction of the City Engineer. . . . The Cost of all this work was accounted for and billed to the Aviation Department who has reimbursed the Street Department.”); Sixty-Sixth Annual Report of the City of Burlington, Vermont, For the Year Ended December 31, 1930 at p. 244 (“We have as usual done the construction work for the Airport Commission which this year consisted of a small amount of grading and leveling and constructing a concrete basement The cost of this work amounted to fourteen hundred and eighty dollars and fifty-seven cents (\$1,480.57).”).

⁹ The Aviation Field is included in the Report of the City Treasurer starting in 1927. *See* Sixty-Third Annual Report, *supra* note 8 at p. 278. The first report of the Board of Airport Commissioners runs from April 25, 1929 through December 31, 1929. Sixty-Fifth Annual Report, *supra* note 8, at pp. 15–16.

¹⁰ Sixty-Fifth Annual Report, *supra* note 8, at pp. 15–16, 239 (“Although a separate department has been appointed to handle the Municipal Airport, the actual work of developments has mostly been done with Street Department forces and equipment under the direction of the City Engineer. . . . The Cost of all this work was accounted for and billed to the Aviation Department who has reimbursed the Street Department.”)

The Board of Airport Commissioners (“the Commission”) was appointed on April 25, 1929 and immediately began making recommendations to the Mayor and Board of Alderman regarding specific improvements to the Airport.¹¹ This was shortly after the Legislature empowered the City of Burlington “to acquire and secure an aviation field[,]” which then Mayor J. Holmes Jackson said was “an important step in [the City’s] municipal undertaking which will call for the closest scrutiny, most careful service and wise economy.”¹²

The Commission also negotiated the Airport’s first tenant—a flight school and commercial aviation business—and purchased, at a cost to the City, a metal hangar, which was 60 by 80 feet, from the tenant at a price of \$6,500 to \$8,500.¹³ In 1930 the City purchased additional land for the Airport from the University of Vermont at a price of \$8,636.05, paid by a special appropriation from the general fund. As part of this acquisition the Airport paid just shy of \$100 for the City Engineer to complete a detailed land survey.¹⁴

The Airport relied on the City for its financing throughout the 1920s and 30s. In 1931 the Commission sought money to employ a full time caretaker to live at the airport, construct an administration building, and paint the existing hangar, the latter two of which were expected to cost approximately \$20,000.¹⁵ The City Council refused to appropriate the requested funds and instead granted an annual appropriation of \$2,669.¹⁶ The City started construction of an administration building in 1933,¹⁷ but it was not until 1934 that the City allotted funds for the building, which was 28 by 36 feet and cost approximately \$11,000 (in addition to an

¹¹ Tabor, *supra* note 2, at p. 37; Sixty-Fifth Annual Report, *supra* note 8, at pp. 15–16.

¹² Sixty-Fifth Annual Report, *supra* note 8, at p. 13.

¹³ Tabor, *supra* note 2, at p. 38; *but see* Sixty-Fifth Annual Report, *supra* note 8, at p. 255 (Payment of \$6,538 to Vermont Airways Corp.).

¹⁴ Tabor, *supra* note 2, at p. 39; Sixty-Fifth Annual Report, *supra* note 8, at p. 242 “[A] survey was made for an addition to the Aviation Field, which addition, was purchased by the University of Vermont and leased to the city of Burlington for aviation purposes.”); Sixty-Sixth Annual Report, *supra* note 8, at pp. 16 (“The Commission favors the purchase of the Airport property from the University of Vermont, which purchase has been authorized by the Board of Alderman. With this property under full control of the city a more extensive development can be made than has heretofore been advisable.”), 259 (Aviation field “[p]urchased from University of Vermont” for \$8,636.05” with funds from the “[s]pecial appropriation, account General Fund.”).

¹⁵ Tabor, *supra* note 2, at p. 44; Sixty-Seventh Annual Report of the City of Burlington, Vermont, For the Year Ended December 31, 1931 at p. 17 (“Hence, the immediate and foremost recommendation of your Board of Airport Commissioners is an Administration Building. We must have it.”); *see also* Sixty-Eighth Annual Report of the City of Burlington, Vermont, For the Year Ended December 31, 1932 at p. 16 (“Through the courtesy and co-operation of the School Committee of the Town of South Burlington, the Airport now has an Administration Building—the former ‘little red schoolhouse.’ . . . Visiting pilots now state that Burlington has the best Administration Building in the State.”).

¹⁶ Tabor, *supra* note 2, at p. 45; Sixty-Seventh Annual Report, *supra* note 15, at pp. 17, 250 (Total appropriations of \$2,669.).

¹⁷ Sixty-Ninth Annual Report of the City of Burlington, Vermont, For the Year Ended December 31, 1933 at p. 52 (“The ‘high spots’ of the year are, of course the final start on a proper administration building”).

appropriation of \$20,000 for the runways).¹⁸ This administration building was eventually added to in 1938 through a special budget appropriation of \$4,000.¹⁹

B. *The 1930s and '40s*

From the early 1930s up until 1950 the City annually appropriated funds and specially appropriated funds on a one time basis, or even through the use of an emergency note, for the Airport.²⁰ It appears that the fiscal year ending June 1951 was the first year that “the Airport income during the past fiscal year [w]as . . . sufficient to pay all the operating expenses of the Airport without any appropriation from the City.”²¹ While the Airport continued to be successful financially for years to come, it was still a point of pride that the Airport was able to meet its financial obligations without relying on local tax dollars. The Commission noted in 1976 that it was “pleased to report another prosperous year. For the fifth consecutive year, the revenues of the Airport Department reached a new high, and for the 28th consecutive year, the [A]irport has successfully met its financial obligations without the need for local tax dollars.”²² (It appears that the reference to the 28th year may have been a typographical error, as 1976 would have been the 26th year with no general fund appropriation.)

Mayor Burns, who was instrumental in the first lease for the Airport back in 1919, noted in his Mayor’s Message of the Seventy-Sixth Report that he “believe[d] that the [A]irport, when completed, should be on a self-sustaining basis, and it should not be necessary to make any further annual appropriations for its operation.”²³ He furthered the sentiment two years later when he noted that the City did not have sufficient funds to support the continued development of the Airport and that it should be fully funded by the Federal government.²⁴ Specifically, in 1943 he wrote:

For some time there has been considerable discussion, relative to the development of the Municipal Airport. In my opinion a solution to

¹⁸ Tabor, *supra* note 2, at p. 54; Seventieth Annual Report of the City of Burlington, Vermont, For the Year Ended December 31, 1934 at pp. 34 (Appropriation of \$20,000 for the “aviation field runways.”), 54 (“Great improvements have been made at Burlington Airport in 1934: . . . the Administration Building[;] cement floor in hangar[; and] North and South runway. . . . Burlington Airport is now on a firmly established foundation and ought to make rapid strides from now on.”).

¹⁹ Seventy-Fourth Report of the City of Burlington, Vermont, For the Year Ending June 30, 1939 at p. 67 (“The addition to the Administration Building authorized by special budget appropriation of \$4,000 was completed in September, 1938.” (emphasis removed)).

²⁰ *See, e.g.*, Seventy-Eighth Report of City of Burlington, Vermont, For the Year Ending June 30, 1943 at pp. 40–41, 68 (regular and special appropriations); Seventy-Ninth Report of City of Burlington, Vermont, For the Year Ending June 30, 1944 at pp. 40, 66 (regular and special appropriations); Eighty-Second Report, City of Burlington, Vermont, For the Year Ending June 30, 1947 at pp. 43–44, 70 (regular appropriations and an emergency note); Eighty-Fifth Report, City of Burlington, Vermont, For the Year Ended June 30, 1950 at pp. 44, 62 (regular appropriation).

²¹ Eighty-Sixth Report, City of Burlington, Vermont, For the Year Ended June 30, 1951 at p. 52.

²² One Hundred and Eleventh Annual Report, City of Burlington, Vermont, For the Year Ended June 30, 1976 at p. 12; *see also* One Hundred and Thirteenth Annual Report 1978, City of Burlington Vermont, For the Year Ended June 30, 1978 at p. 11 (“During Fiscal Year 1978, the Aviation Department continued to be independent of the need for tax support, either in capital outlay programs or operations programs. This condition was achieved by the many sound, businesslike decisions of the Board of Airport Commissioners, and their dedication to the concept of total cost recovery from the various users of the [A]irport’s facilities.”).

²³ Seventy-Sixth Report of the City of Burlington, Vermont, For the Year Ending June 30, 1941 at p.15.

²⁴ Seventy-Eighth Report, *supra* note 20, at p. 15.

the operation of this enterprise is necessary. . . . From time to time requests have been made of the city to purchase additional land, extend runways, enlarge the administrative quarters, erect hangars, towers, etc. **We do not have sufficient funds to cover this expansion** and, since the airport is being used almost entirely by various training outfits under Federal government sponsorship it seems to me it would be wise to lease the airport, if possible, to the United States government for a nominal sum for the duration. At the present time, the operation of the airport, under existing conditions, is a burden which I honestly feel should be carried by the Federal government, rather than by the City.²⁵

He also wrote in his 1946 Mayor's Message that "[a]ir transportation is becoming a major industry; it should no longer expect to be subsidized by managing municipal airports at a deficit,"²⁶ and noted in his 1947 Mayor's Message that he felt that the Airport compared very favorably with those of other comparably sized cities throughout the country and

[that the City had] made definite steps toward placing [the Airport] upon a self-supporting basis, [but that the City] should not relax in this effort, and should keep as [its] aim the development of the airport in the future as an international airport, for both transport and cargo, and to install, with Federal aid, every possible safety device.²⁷

Presumably to minimize the burdens to the taxpayers, the City, including Mayor Burns, worked with Vermont's congressional representatives to secure substantial amounts of additional funding from the federal government, through New Deal funding for Works Progress Administration (WPA) projects and the Civil Aeronautics Administration (CAA)²⁸ to improve the Airport through the 1940s.²⁹ It appears that New Deal funding for WPA projects was the first funding by anyone other than Burlington taxpayers for the Airport, although Burlington investments continued at the same time. For example, a runway improvement required Burlington to secure title to additional adjoining land.³⁰ The city secured funding for these purchases through the issuance of a \$50,000 bond approved by the voters with a margin of 5-to-1 in March 1941.³¹

²⁵ *Id.* at p. 15.

²⁶ Eighty-First Report, City of Burlington, Vermont, For the Year Ending June 30, 1946 at p. 17.

²⁷ Eighty-Second Report, *supra* note 20, at pp. 15–16.

²⁸ The Civil Aeronautics Authority was created by the Civil Aeronautics Act in 1938 and then split into two agencies, the Civil Aeronautics Administration and the Civil Aeronautics Board, in 1940. The CAA began administering federal aid programs for airport development in 1946.

²⁹ Seventy-First Report of the City of Burlington, Vermont, For the Year and One-Half Ended June 30, 1936 at p. 125–29; Seventy-Second Report of the City of Burlington, Vermont, For the Year Ended June 30, 1937 at p. 64; Seventy-Third Report of the City of Burlington, Vermont, For the Year Ended June 30, 1938 at p. 69; Seventy-Sixth Report, *supra* note 23, at p. 64.

³⁰ Tabor, *supra* note 2, at p. 67; Seventy-Sixth Report, *supra* note 23, at p. 62.

³¹ Tabor, *supra* note 2, at pp. 67–68; Seventy-Sixth Report, *supra* note 23, at pp. 29, 31, 63; Seventy-Seventh Report of the City of Burlington, Vermont, For the Year Ending June 30, 1942 at p. 68 (“The bond issue of \$50,000, approved by the voters of the City in March, 1941, has enabled the Airport Commission to carry out further developments and extensions of the Airport. . . . The total area of the Airport is now approximately 440 acres. A detailed report of these purchases of the last year may be found in the City Engineer's report.”).

The Burlington City Engineer and City Attorney were very involved in the surveying, monumenting, and acquisition of more than 400 acres for the airport in the early 1940s.³² One parcel was purchased from the University of Vermont through friendly condemnation, at a cost of \$6,000 pulled from the \$50,000 bond, and involved the relocation of 70,000 seedling trees to Jericho, VT at a relocation cost to the City of \$19,187.73, not including the \$2,500 purchase price for the land in Jericho, VT.³³ The City Engineer was also very involved in the preparation of “plans and specifications for the improvement of the Burlington Municipal Airport . . . and several extra sets of plans and specifications [were] furnished for the various Government Department including the Work Project Administration and the Civil Aeronautics Administration and for the contractors who are performing the work.”³⁴

The City Engineer and the Burlington Streets Department were also responsible for snow removal, which, at \$15,000, accounted for more than ten percent of the Street Department’s 1940 budget, including at the Airport,³⁵ and was generally a time consuming and expensive activity for the Street Department throughout the 1940s.³⁶ The Airport’s success at snow removal has

³² Seventy-Seventh Report, *supra* note 31, at p. 80 (The City Attorney “attended to the purchase of eleven lots of land for the Municipal Airport in which the City was aided by contributions from the State and obtained proper conveyances of these lands to the City.”), 179 (“A considerable amount of work has been necessary for the Airport Commission in making surveys of the additional land purchases at the Airport.” The Report of the City Engineer also includes an itemization of the parcels purchased during the prior year.); Seventy-Eighth Report, *supra* note 20, at p. 177 (“Some work has been necessary for the Airport Commission in making surveys of the additional land purchases at the Airport.”).

³³ Tabor, *supra* note 2, at p. 69; Seventy-Sixth Report, *supra* note 23, at p. 63; *but see id.*, at pp. 38–59 (It is not clear from the Report of the City Treasurer what the source of the money for the \$19,187.73 in relocation costs was.).

³⁴ Seventy-Sixth Report, *supra* note 233, at p. 180; *see also* Eighty-Third Report, City of Burlington, Vermont, For the Year Ending June 30, 1948 at pp. 42, 167 (City Engineer did work paid for through an \$11,000 appropriation for extensive proposed improvements at the Airport.).

³⁵ Seventy-First Report, *supra* note 29, at p. 127 “[N]ote the snow piled on either side of the runway where the Street Department plows had cleared the snow during several days storm previous to the occupancy of the Airport by the Army Air Corps. These runways were kept opened and free of snow during the two weeks’ period that the Airport was occupied by the Air Corps.”); Tabor, *supra* note 2, at p. 84; *see also* Seventy-Fifth Report of the City of Burlington, Vermont, For the Year Ending June 30, 1940 at pp. 26, 166–67, 175–76 (“In addition to clearing the snow from our streets the Street Department has removed the snow from the hard-surfaced runways at the Municipal Airport by the use of the rotary snow plow. This added service has been very beneficial to the continuous service which the Airport has been able to provide for the airlines coming into Burlington. Several times the Burlington Airport runways were the only runways open after severe storms between New York and Montreal and on one specific occasion the runways were cleared for a special landing on a Sunday afternoon following a severe storm when less than two hours’ notice was given that the airplane was making the trip and wished the runways cleared. Seven of the Street Department snowplows were used on this occasion and the runways were entirely cleared while the airplane was in flight between New York and Burlington. (emphasis removed)).

³⁶ Seventy-Sixth Report, *supra* note 233, at p. 173 (“In addition to clearing the snow from our streets the Street Department has removed the snow from the hard-surfaced runways at the Municipal Airport by the use of the rotary snow plow.”); Seventy-Seventh Report, *supra* note 31, at p. 173 (“This last winter an added task was handed to the Street Department which was that of plowing the snow from the newly constructed hard-surfaced diagonal runway which is 4,300 feet long and 15 feet wide. All runways were cleared to a width of 300 feet.”); Seventy-Eighth Report, *supra* note 20, at p. 171 (“This is not a regular function of the Street Department, but has been performed with rapidly increasing demands over the past few years until now it has become one of the major responsibilities after each and every snow storm or sleet storm due to the increased activities brought on by the War. It would seem advisable for the Airport Commission to purchase its own snow removal equipment and have it housed at the Airport where it will be available from all storms and emergencies. The Street Department equipment used on the Airport work can be used to good advantage on the Street Department work and the depreciation on this equipment [is] much greater in doing the work at the Airport than it would be if only employed for Street Department uses.”); Eightieth Report of City of Burlington, Vermont, For the Year Ended June 30, 1945 at p. 174 (“The additional

continued throughout the Airport's history, and the Airport earned second in the annual International Snow Removal Competition in fiscal year 1984, an honor that would be repeated, finally winning for its division in 1987.³⁷ Incidentally, snow removal continues to be a top priority of the Airport and is an annual expense of almost a million dollars.

By the end of the 1930s the Airport was certified as appropriate for use by planes of all sizes, served by two airlines, and transported more than 13,000 passengers annually.³⁸ Because of its geographic location and the establishment of an 130 mile "defense zone" along the coast, the Airport became the busiest airport in the world on August 14, 1942 with 662 landings in one day; a tally that was surpassed on February 11, 1943 with 793 landings in one day.³⁹

C. *Partnership with VTANG*

The Vermont Air National Guard (VTANG) came into existence on July 1, 1946, and with it a new partnership with the Airport, flurry of activity, creation of jobs (military and civilian), and an influx of money.⁴⁰ The creation of VTANG also necessitated extensive improvements to the Airport, which were estimated to cost approximately \$400,000.⁴¹ State and federal sources agreed to contribute \$225,000 if Burlington contributed \$150,000, which was put to the voters as a bond request on two separate occasions, finally receiving approval in a special election in April 1948.⁴² VTANG's presence at the Airport is also what permitted the Airport to get its Airport Operating Certificate from the Federal Aviation Administration after a mandate from the United States Congress required certification that air carrier airports were safe for operation.⁴³ The Airport secured its Airport Operating Certificate on May 15, 1973 after negotiating with VTANG to secure "24 hour crash-fire-rescue protection in exchange for assumption by the city of the full maintenance responsibility of the airport's longest runway, heretofore an obligation of the Guard."⁴⁴

burden placed upon our Street Department equipment to handle the snow removal for the Airport which increases each year, should be relieved by purchasing a snow removal unit for the use of the Airport Commission." (emphasis removed)); Eighty-First Report, *supra* note 26, at p. 71 ("The acquisition during this past fiscal year of a Sicard Snow Blow, at cost of \$18,853, was, together with the complete installation of new runway lights, a very important step to assure an open airport throughout the winter months." (emphasis removed)); Eighty-Second Report, *supra* note 20, at p. 44 (The Sicard Snow Blow was purchased by using funds from an emergency note of \$18,853.).

³⁷ City of Burlington, Vermont, 119th Annual Report for the Year Ending June 30, 1984 at p. 18; City of Burlington, Vermont, 120th Annual Report for the Year Ending June 30, 1985 at p. 24; City of Burlington, Vermont, 122nd Annual Report, for the Year Ending June 30, 1987 at p. 24.

³⁸ Tabor, *supra* note 2, at p. 63; Seventy-Third Report, *supra* note 29, at p. 69 ("The Burlington Airport is now rated by the Bureau of Air Commerce as A2A, which means that it is suitable for use of all of the present large transport planes. There are only a few of the very largest airports in the United States that have a higher Department of Commerce rating."); Seventy-Fifth Report, *supra* note 355, at p. 63 ("During the fiscal year ending June 30, 1940, there were 13,747 passengers passing through Burlington on the Boston-Maine and Canadian Colonial Airlines." (emphasis removed)).

³⁹ Tabor, *supra* note 2, at pp. 72-73.

⁴⁰ *Id.* at pp. 87-89; Eighty-First Report, *supra* note 266, at p. 17 (One of the things Mayor Burns submitted for consideration in his 1946 Mayor's Message was: "Full co-operation with the State and Federal Governments in their endeavor to establish a National Guard Air Arm base at out Municipal Airport, an aim toward which much progress has already been made.").

⁴¹ Tabor, *supra* note 2, at p. 89.

⁴² *Id.* at pp. 89-90; Eighty-Fourth Report, City of Burlington, Vermont, For the Year Ended June 30, 1949 at p. 33 (\$160,000 in bonded debt distributed to the Airport).

⁴³ One Hundred and Eighth Annual Report, City of Burlington, Vermont, For the Year Ended June 30, 1973 at p. 16.

⁴⁴ *Id.*

In 1949 and 1950 the Airport built a new administration building; it also extended the diagonal runway to 5,000 feet, and installed an instrument landing system, at costs of \$255,000 and \$275,000 respectively (paid for through federal funding) and spent an additional \$15,000, provided by the City and State, for improvements to parking facilities.⁴⁵ The Airport continued to keep pace with aircraft advancements, and extended its runway to 9,000 feet so that it would continue to be able to handle all aircraft in the air during the 1960s.⁴⁶

Burlington was able to afford these advancements because of federal match financing through predecessor programs to the Federal Aviation Administration's current Airport Improvement Program (AIP), such as the Aid to Airports Program, which also helped pay for new paving, runway and taxiway repairs and updates to both the terminal and administration buildings in 1962, and other necessary improvements throughout the 1960s.⁴⁷ The Aid to Airports Program was replaced by the Airport Development Aid Program (ADAP), which helped fund 30 projects from 1970 to 1983, including the Airport's first Federal Aviation Regulation Part 150 (voluntary noise) study.⁴⁸

D. Additional capital investments in the 1960s and '70s

Despite all the federal funding that was available to the Airport, it was not enough to ensure that the Airport was able to provide sufficient aviation services. As the Airport Commissioners noted in 1967: "The Commission will continue to make every effort to provide safe, efficient, and economical aviation facilities; however, it must be emphasized that in order to continue to do this, it will be necessary to invest additional capital not now available."⁴⁹ The Airport would go on to over-expend in that fiscal year and the next fiscal year.⁵⁰

Mayor Francis J. Cain appointed a Special Advisory Committee for the Airport in 1968, and the Commission retained the national airport consulting firm James C. Buckley, Inc. to prepare a long-term master-plan study, which was completed in June 1969 at a cost to the City of

⁴⁵ Tabor, *supra* note 2, at pp. 97–99; Eighty-Fifth Report, *supra* note 20, at p. 18.

⁴⁶ Tabor, *supra* note 2, at p. 113.

⁴⁷ *Id.* at p. 116; *see also* Ninety-Seventh Annual Report, City of Burlington, Vermont, For the Year Ended June 30, 1962 at p. 77 ("Federal Aviation Agency projects are continuing which include taxi-way lighting, a new taxi-way, extension of ramp, additional tie-down space, a new garage for our vehicles, and other improvements. Seventy-five percent of the cost of these projects is being paid with State and Federal funds. The remaining twenty-five percent is being paid out of Airport revenue.").

⁴⁸ Tabor, *supra* note 2, at p. 130; One Hundred and First Annual Report, City of Burlington, Vermont, For the Year Ended June 30, 1966 at p. 73; One Hundred and Second Annual Report, City of Burlington, Vermont, For the Year Ended June 30, 1967 at p. 69; One Hundred and Seventh Annual Report, City of Burlington, Vermont, For the Year Ended June 30, 1972 at p. 16; One Hundred and Eleventh Annual Report, *supra* note 22, at p. 12; City of Burlington, Vermont, 121st Annual Report for the Year Ending June 30, 1986 at p. 22 ("At this time we are obtaining funding to undertake a comprehensive FAA Part 150 Noise Study. This effort will determine if any steps can be taken to further the airport compatibility in the community. The noise contours have diminished due to the Air Guard's acquisition of the new, quieter F-16. The aircraft industry recognizes its role in the problem area. New technology engines are now used on some airliners using Burlington.").

⁴⁹ One Hundred and Third Annual Report, City of Burlington, Vermont, For the Year Ended June 30, 1968 at p. 67.

⁵⁰ *Id.* at p. 69; One Hundred and Fourth Annual Report, City of Burlington, Vermont, For the Year Ended June 30, 1969 at pp. 68–69; One Hundred and Fifth Annual Report, City of Burlington, Vermont, For the Year Ended June 30, 1970 at p. 105.

Burlington of \$23,000.⁵¹ The Special Advisory Committee was formed “to assist and advise the Airport Commission [with] Airport Development when careful consideration has to be given to the alternate courses of action relating to the development, funding, and maintenance of the airport.”⁵² It appears that 1969 was also the first time that South Burlington was invited to participate as an honorary member at meetings of the Commission.⁵³ A South Burlington representative was made an official position on the Commission in 1973.⁵⁴

In 1971 the City raised funds for the terminal expansion and reconstruction recommended in the long-term master-plan study through a general obligation bond in the amount of \$1.25 million.⁵⁵ While the Airport had funded earlier projects with revenue bonds that used the Airport’s income as the bond’s guarantee, the New York rating agencies determined that the Airport’s revenue stream was insufficient for the ultimate bond buyers.⁵⁶ Unlike the earlier airport revenue bonds, the general obligation bond would be backed by Burlington’s full faith and credit, which meant that a two-thirds majority of the voters needed to be in favor of the bond.⁵⁷ The Airport secured this super-majority through advertising in both newspapers and on television, and the May 11, 1971 bond vote was well in excess of the required two-thirds majority.⁵⁸

The new 40,000 square foot terminal was eventually finished in October 1973, at a cost of \$1.25 million from the May 1971 general obligation bond.⁵⁹ The project was not without its delays, one of which involved negotiating a stabilizing tax agreement with South Burlington.⁶⁰ The terminal was eventually expanded by 50% in the mid-1980s and dedicated in November 1, 1986, at a cost of over \$5 million, \$3.2 million of which came from a voter approved bond.⁶¹

⁵¹ Tabor, *supra* note 2, at pp. 116, 118, 126; One Hundred and Fourth Annual Report, *supra* note 50, at p. 67.

⁵² Tabor, *supra* note 2, at p. 116 (citing Mayor Francis J. Cain’s opening comments at the first meeting on August 14, 1968).

⁵³ One Hundred and Fourth Annual Report, *supra* note 50, at p. 67 (“Mr. Vincent D’Acuti, Selectman, representing the Town of South Burlington, was invited to participate in Commission Meetings as an honorary member.”).

⁵⁴ One Hundred and Ninth Annual Report, City of Burlington, Vermont, For the Year Ended June 30, 1974 at p. 14 (“As a result of a tax stabilization agreement with the City of South Burlington, and voter approved City of Burlington Charter change, the Board of Airport Commissioners was expanded from three members to five. As per the amendment, four members would be appointed by the City Council of Burlington, and one member by the City Council of South Burlington. On July 1, 1973 Vincent J. D’Acuti, a resident of South Burlington, was named as South Burlington’s representative.”).

⁵⁵ Tabor, *supra* note 2, at pp. 130–31; Burlington International Airport, Media Guide to Airport Emergencies at p. 6, available at: http://www.btv.aero/documents/Media_Guide_050313.pdf (last visited Nov. 11, 2019); One Hundred and Sixth Annual Report, City of Burlington, Vermont, For the Year Ended June 30, 1971 at p. 15 (“In October 1970, the architectural firm of Richard H. Wiemann was selected to design an expanded terminal facility. The expansion was to be financed by the sale of general obligation bonds amounting to \$1.25 million. On March 2, 1971, voters approved the sale of bonds by a simple majority. It was later discovered that a 2/3 majority was necessary for passage. The issue was brought to the voters again on May 11, and the necessary majority was received at that time.”).

⁵⁶ One Hundred and Sixth Annual Report, *supra* note 55, at p. 15; Tabor, *supra* note 2, at p. 131.

⁵⁷ One Hundred and Sixth Annual Report, *supra* note 55, at p. 15; Tabor, *supra* note 2, at p. 131.

⁵⁸ One Hundred and Sixth Annual Report, *supra* note 55, at p. 15; Tabor, *supra* note 2, at p. 131; Media Guide, *supra* note 55, at p. 6.

⁵⁹ Tabor, *supra* note 2, at pp. 150, 161; Media Guide, *supra* note 55, at p. 6; One Hundred and Seventh Annual Report, *supra* note 488, at p. 15.

⁶⁰ One Hundred and Seventh Annual Report, *supra* note 488, at p. 15.

⁶¹ Tabor, *supra* note 2, at pp. 150, 161; City of Burlington, Vermont, 120th Annual Report, *supra* note 377, at p. 23; City of Burlington, Vermont, 121st Annual Report, *supra* note 488 at pp. 296–97; City of Burlington, Vermont, 122nd Annual Report, *supra* note 37, at p. 23.

This was a necessary expansion since enplanements were up to 400,000 by 1983, with more than a million people passing through the terminal on an annual basis.⁶²

The Airport was able to collect the fees that it did from users in part because it committed to putting revenues back into the Airport, a practice that is required today by the Federal Aviation Administration's Grant Assurances.⁶³ Specifically, the Airport was able to increase income in fiscal year 1979 "largely due to the fact that new contracts were negotiated with the airlines, permitting fee structures based on the 'Cost of Service Concept.' Under this concept, airport users pay fees based on their share of the actual costs of operating the airport in exchange for a commitment by the City that all revenues generated at the airport be used exclusively for airport development."⁶⁴

E. The Federal Airport Improvement Program in the 1980s

In the mid-1980s the Airport Development Aid Program transitioned to the Federal Aviation Administration's current funding program, the Airport Improvement Program (AIP).⁶⁵ The first grant was received in fiscal year 1982, and the Airport has now received at least 117 individual grants totaling more than \$170 million. The recent October 2019 Taxiway Golf Phase 2 project is the largest individual grant to date at about \$16 million. Of these grants, a 10% state/local share has typically been required.

In May 1984 Mayor Bernie Sanders proposed taking \$200,000 from the Airport for general expenses of the City.⁶⁶ The Airport Commission unanimously voted to give the City of Burlington \$300,000.⁶⁷ Governor Richard Snelling and the Federal Aviation Administration responded by threatening to cut off state and federal funding because as of 1982, airport-generated revenue could only be used for airport-related costs.⁶⁸ After unsuccessfully pleading his case to the FAA, Mayor Sanders offered to sell the Airport for \$10 million, but there were no takers.⁶⁹ Two months later, Burlington agreed not to take money from the Airport for the City unless the FAA or courts determined it was legal to do so.⁷⁰ During this time, Mayor Floyd Handy of St. Albans, VT proposed that a two-county airport authority should run the Airport, but this proposal was rejected as well.⁷¹

F. Continued growth in the 1990s and 2000s

⁶² Tabor, *supra* note 2, at p. 149; Media Guide, *supra* note 55, at p. 6.

⁶³ One Hundred and Fourteenth Annual Report, 1979, City of Burlington, Vermont at p. 12; Federal Aviation Administration, Grant Assurances for Airport Sponsors No. 25, available at: www.faa.gov/airports/aip/grant_assurances/media/airport-sponsor-assurances-aip.pdf (last visited Nov. 11, 2019).

⁶⁴ One Hundred and Fourteenth Annual Report, *supra* note 63, at p. 12.

⁶⁵ City of Burlington, Vermont, 121st Annual Report, *supra* note 48, at p. 22.

⁶⁶ Tabor, *supra* note 2, at p. 160.

⁶⁷ *Id.* at p. 161 (South Burlington's member of the Commission opposed giving money to the City of Burlington.).

⁶⁸ *Id.* at p. 161; Airport and Airway Improvement Act of 1982, Pub. L. No. 97-248 § 511(a)(12) ("[A]ll revenues generated by the airport, if it is a public airport, will be expended for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly related to the actual transportation of passengers or property."); *see also* 49 U.S.C. §§ 47107(b)(1), 47133; Grant Assurances for Airport Sponsors No. 25, *supra* note 63.

⁶⁹ Tabor, *supra* note 2, at pp. 161–62.

⁷⁰ *Id.* at pp. 161–62.

⁷¹ *Id.* at p. 162.

In 1996 Burlington voters were once again asked to, and did, approve a \$20 million revenue bond for the three-phase Terminal Improvement Program, which would enlarge the terminal by approximately 15,000 square feet and make improvements to the parking area and adjacent industrial park.⁷² In Fiscal Year 1999, the City of Burlington received approval from the Federal Aviation Administration to amend the Airport’s Passenger Facility Charge (PFC) to allow “the Airport—with voter approval—to sell revenue bonds backed by the PFC in order to increase the airport’s capacity and make possible continued improvements to service.”⁷³

After a decrease in enplanements in the late 1990s, the Airport experienced a resurgence in enplanements, which peaked in 2008 with approximately 750,000 enplanements, 100th highest in the nation for that year.⁷⁴ Part of what fueled this resurgence was JetBlue’s commencing service to the Airport in late 2000.⁷⁵ This required the approval of the City of Burlington, as “City voters approved revenue bonds to finance the construction of a new commuter concourse to house JetBlue” in an amount not to exceed \$12.3 million.⁷⁶ An additional revenue bond was issued on June 11, 2003 in the amount of \$24.8 million with a maturity date of July 1, 2028;⁷⁷ and certain bonds were refunded in 2012 and 2014.⁷⁸ As of June 30, 2018, the Airport continued to have long-term debt outstanding of approximately \$34 million, all of which is backed by the full faith and credit of the City.⁷⁹

As will be discussed in the next section, the Airport has been performing extremely well recently and is in a strong position today. It now covers 942 acres within the city of South Burlington.⁸⁰

IV. The Burlington International Airport Is in a Strong Position Today

A. Breadth of air service

In the fiscal year ending June 30, 2019, the Airport served approximately 1.38 million commercial passengers with non-stop air service provided by JetBlue, Delta Air Lines, American

⁷² *Id.* at p. 175; City of Burlington, Annual Financial Report, Year Ending June 30, 1996 at p. 17 (“A revenue bond was recommended – and passed by Burlington voters in November of 1996 – to support needed parking improvements, enhanced terminal access, and an enlarged terminal lobby. These projects will ensure that the airport continues to provide a positive first impression on the thousands of customers who use the airport as a port of entry to the city and the region.”); City of Burlington, Vermont, Annual Financial Report, Year Ending June 30, 1997 at pp. 201–02.

⁷³ City of Burlington, Vermont, Annual Financial Report, Year Ending June 30, 1999 at p. 17.

⁷⁴ Commercial Service Airports (Primary and Non-Primary) Calendar Year 2008, available at: https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/media/cy08_primary_np_comm.pdf (last visited Nov. 11, 2019).

⁷⁵ City of Burlington, Vermont, Annual Financial Report 2000 at p. 23.

⁷⁶ *Id.* at pp. 23, 67; City of Burlington, Vermont, Annual Financial Report 2001 at pp. 211–13.

⁷⁷ City of Burlington, Vermont, Annual Financial Report, Year Ending June 30, 2003 at p. 156.

⁷⁸ City of Burlington, Vermont, Annual Financial Report, Year Ended June 30, 2015 at p. 185.

⁷⁹ City of Burlington, Vermont, Airport Enterprise Fund, Financial Statements, June 30, 2018 at p. 7, available at: https://www.burlingtonvt.gov/sites/default/files/Burlington%20VT%20Airport%20FS18%20Final_012819.pdf (last visited Nov. 11, 2019).

⁸⁰ See R.A. Wiedemann & Associates, Inc., Burlington International Airport Regional Value Assessment May 2019 (attached as Exhibit A), at p. 2.

Airlines, United Airlines, Frontier Airlines, and Porter Airlines (seasonally), to thirteen major airports:

- Atlanta, GA (ATL);
- Charlotte, NC (CLT);
- Chicago, IL (ORD);
- Denver, CO (DEN);
- Detroit, MI (DTW);
- Newark, NJ (EWR);
- New York, NY (JFK and LGA);
- Orlando, FL (MCO);
- Philadelphia, PA (PHL);
- Toronto, ON (YTZ);
- Washington, DC (IAD and DCA).

In the coming years, domestic passenger growth is projected to rise 1.2% per year, although the Airport anticipates a 5% increase in scheduled airline service based on published airline schedules. The Airport has demonstrated stabilized enplanement growth and air service development over the last five years, and non-stop routes such as Atlanta, GA (ATL) and Charlotte, NC (CLT) have proven successful. These southern destinations are advantageous because they are more insulated from the inclement weather delays common to congested northern metropolitan airport hubs, particularly in the winter. These non-stop routes also connect the Airport, and Vermont in general, to two large domestic hubs that were nationally ranked first (ATL) and eighth (CLT) in enplanements in calendar year 2017.⁸¹ In total, Vermonters now have access to more than 1,000 global destinations in two flights or less from Burlington International Airport.

In calendar year 2018, the Airport experienced its strongest growth in enplanements since 2009, with approximately 674,944 enplanements and 1,348,894 total passengers passing through the Airport between January 1, 2018 and December 31, 2018.

B. Extent of supportive services and facilities

The Airport also increased its concessions to serve the increased level of enplanements over the last five years. For example, the locally sourced farm-to-table food and beverage provider, Skinny Pancake, has been integrated into all three terminals, and the Airport's news and gift provider, Hudson News, now carries 50% Vermont made products. Together, these concessionaires' gross sales exceed \$5 million annually, up from just \$500,000 six years ago.

Additionally, the Airport's advertising concessionaire estimates grossing \$250,000 annually, and contributed \$122,061 to Airport revenues in 2018. To support rental car concessionaires, a new Quick Turnaround (QTA) facility broke ground in the spring of 2019. The QTA facility will be equipped with extended queue lanes, six fueling bays, and three

⁸¹ Commercial Service Airports (Rank Order) based on Calendar Year 2017 Enplanements, available at: https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/media/cy17-commercial-service-enplanements.pdf (last visited Nov. 11, 2019).

carwash bays to allow for a more efficient rental car turnaround process. These concessionaires report grossing over \$20 million dollars per year in sales at the Airport.

To further enhance the customer experience and revenue controls, a major upgrade the Airport's Parking Access and Revenue Control System (PARCS) was completed in August of 2018. This upgrade allows the Airport to offer short-term and long-term parking in the same facility, as well as an automated checkout process, which, allows for greater revenue oversight.

An onsite Airport hotel, with at least 100 rooms and situated adjacent to the parking garage, is under construction and expected to open in early 2020. This hotel will provide the first accommodations within walking distance of the Airport since its founding. The project is privately funded but will include a long-term lease of Airport property.

C. Airport infrastructure

As required by FAA regulations and grant assurances, all of the Airport's revenue is put back into the Airport. To accommodate the sustained and projected passenger growth, the Airport recently received federal airport improvement program (AIP) grant awards of approximately \$10 million in federal fiscal year 2018. The first major project is the development of a new Airport Master Plan, which will identify required future infrastructure improvements. The second major project includes Phases 4, 5 and 6 of the Air Carrier Rehabilitation, which will reconstruct the apron located in the vicinity of Gates 1, 4 and 6. Further, the Airport has applied for its largest grant in history, for a project totaling over \$24 million to finalize construction of the first parallel taxiway adjacent to the main runway in the Airport's history. The Airport expects that from fiscal year 2019 through fiscal year 2023 it will receive more than \$34 million from the FAA in AIP grants for improvements such as: apron rehabilitation, taxiway rehabilitation and relocation, runway improvements, and the continuation of a noise mitigation program.

In preparation for the arrival of the F-35 aircraft, the Vermont Air National Guard (VTANG) invested over \$100 million in infrastructure improvements. These improvements included hangar retrofitting and taxiway reconstruction on land that is leased to VTANG by the Airport, which will default back to the Airport if VTANG were to relocate. Additionally, the Aircraft Rescue and Firefighting of VTANG unit has been upgraded to provide advanced rescue and firefighting services to military, commercial, and private aviation at the Airport, an estimated value of more than \$2.5 million annually, in return for minimal lease rental payments.⁸²

D. Noise mitigation and community engagement

The Airport has been participating in the FAA's voluntary Part 150 noise program for more than three decades, the purpose of which "is for the airport proprietor, in consultation with state/local planners, local aviation groups and interested citizens, to develop a balanced and cost-effective program to minimize and/or mitigate the airport's noise impact on local

⁸² Arthur Wolfe, The Economic Impact of the Vermont Air and Army National Guard Bases, Feb. 26, 2018 at p. 7, available at: <http://gbcvt.org/files/2018/02/Economic-Impact-of-the-Vermont-Air-and-Army-National-Guard-Bases.pdf> (last visited Nov. 11, 2019).

communities.”⁸³ As part of this program, the Airport has a Technical Advisory Committee, which includes representatives from all adjacent municipalities, including school districts.⁸⁴ The Airport also formed, in direct response to concerns from neighboring communities, a Sound Mitigation Committee, which meets quarterly to “proactively and openly discuss the effects of sound that BTV creates on the region.”⁸⁵

In connection with the Part 150 noise program, the Airport updated its Noise Exposure Maps at the end of May 2019 and is in the process of updating its Noise Compatibility Program (NCP).⁸⁶ The maps provide for an estimate, based on mathematically calculated dnl (day-night average sound level) contour lines, of what areas around the Airport will be the most affected by noise from the Airport’s operations, including the basing of the F-35s.⁸⁷ The NCP will establish the sound mitigation measures that the Airport may be able to provide, with federal grant money, to affected property owners (buyout, assistance with sale, soundproofing, etc.) based on the particular contour lines in which the property falls. Of particular importance to neighboring communities is the fact that public feedback must be solicited and responded to in the preparation of both the maps and NCP. For example, two public sessions were held at the end of May to review the maps. The FAA will evaluate the options for noise mitigation funding based on technical feasibility, impact to residents, cost, and schedule.⁸⁸

The Airport also recently worked with the FAA to secure funding for and conduct a noise study of South Burlington’s Chamberlin Elementary School to determine if some or all of the school building is eligible for mitigation.⁸⁹ That study showed that the sound levels within the school were not high enough to be eligible for sound insulation; however, the Airport is working with the school on funding for a positive ventilation system.

E. Economic development

Recently, the Airport hired (as part of the update to the overall Airport Master Plan) R.A. Wiedemann & Associates, Inc. (RWA), a consultant that specializes in aviation planning, aviation specific marketing and economic impact analysis, to conduct a regional value assessment for the Airport.⁹⁰ A copy of that assessment is included with this report as Exhibit A. RWA has calculated that the Airport supports almost 5000 jobs, with a total payroll over \$170

⁸³ Federal Aviation Administration, Advisory Circular AC 150/5020-1, Noise Control and Compatibility Planning for Airports at p. 2, available at: https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC_150_5020-1.pdf (last visited Nov. 11, 2019).

⁸⁴ See generally Burlington International Airport, Sound Mitigation Program, NCP Update, available at: <http://www.btvsound.com/ncp-update/> (last visited Nov. 11, 2019).

⁸⁵ See Burlington International Airport, Sound Mitigation Program, Sound Committee, available at: http://www.btvsound.com/wp-content/uploads/sites/4/2017/07/SMC_Purpose.pdf (last visited Nov. 11, 2019).

⁸⁶ Burlington International Airport Sound Mitigation Program, available at: <http://www.btvsound.com/> (last visited Nov. 11, 2019).

⁸⁷ Memorandum from N. Longo re: Burlington International Airport Contract Award – Noise Exposure Map, The Jones Payne Group, May 21, 2018, available at: <http://www.boarddocs.com/vt/burlingtonvt/Board.nsf/goto?open&id=AZALAU55AB3B> (last visited Nov. 11, 2019).

⁸⁸ Noise Program Update, <http://www.btvsound.com/ncp-update/> (last visited Nov. 11, 2019).

⁸⁹ Memorandum from N. Longo re: Burlington International Airport Federal Aviation Administration Grant Acceptance – Chamberlin Elementary School Acoustical Testing, May 21, 2018, available at: <http://www.boarddocs.com/vt/burlingtonvt/Board.nsf/goto?open&id=AYTRD66D717C> (last visited Nov. 11, 2019).

⁹⁰ Wiedemann, *supra* note 80,.

million. Including indirect effects on the region's economy from visitors and those employees, the study estimates that the Airport generates annual economic activity of over \$481 million a year.⁹¹

RWA also looked at the value of airport facilities, calculating both the replacement value of the Airport (an estimate of the construction value of the individual facilities at the Airport) and the current value of the Airport's facilities (an estimate of the value taking into account facility age and estimated useful life).⁹² These estimates provide a replacement value of \$892 million and a current value of \$562 million.⁹³ Combined with the annual economic activity of \$481 million, the overall value of the Airport to the region is estimated at \$1.04 billion.⁹⁴

V. Current Ownership and Governance of Burlington International Airport

A. The City Council

The City of Burlington's state law charter currently authorizes Burlington to own and operate the Airport. The City Council of Burlington is specifically empowered:

To acquire and hold by lease, purchase or gift and to maintain within the limits of said city, or within the limits of an adjoining town, a public aviation field and municipal airport and to properly equip the same for use; to regulate the use of said field and its equipment and to charge, receive, demand and collect from time to time reasonable compensation for use thereof and to manage and control such field and its equipment, appoint proper officers to have charge of the same and to define their duties; to provide for the establishment and maintenance of an airport police force to provide security and law enforcement within the limits of the airport premises and to lease to private parties for aviation purposes such part of said field and buildings as in the judgment of the city council is not for the time being required by the city for the purposes of a public aviation field or municipal airport and for such time as in the judgment of said council the same is not so required.⁹⁵

It is also charged with "the exclusive general management and control of all lands owned or leased and used by the city for the purpose of a municipal airport, and of all buildings, property and equipment of the city thereon, and shall see that the same are kept in good condition and repair."⁹⁶

In 2012, the Council formed an Airport Strategic Planning Committee that looked at the airport in the context of a broad range of issues from finances to economic development to governance. In June 2013 that Committee made three primary recommendations related to governance: 1) consider adding a seat for Winooski on the Airport Commission, 2) consider having the mayor appoint the Aviation Director from a slate of three candidates recommended by

⁹¹ *Id.* at 13.

⁹² *Id.* at 9-10.

⁹³ *Id.* at 14.

⁹⁴ *Id.*

⁹⁵ 24 V.S.A. app. ch. 3 § 48(50).

⁹⁶ *Id.* §276(a)(2).

the Airport Commission, and 3) further explore the advantages and disadvantages of a regional authority, with the State.⁹⁷

B. *Airport staff*

The daily operations of the Airport are run by a Director of Aviation who is appointed by the Burlington Mayor, with the approval of a majority of the Burlington City Council.⁹⁸ The staff of the Airport are employees of the City of Burlington, and Local 1343 of the American Federation of State, County, and Municipal Employees represents Airport employees (as well as other city employees) who are within the bargaining unit. The Director of Aviation has “special and immediate care and practical supervision of the airport department subject to the authority of the mayor as chief executive officer and to the orders and ordinances of the city.”⁹⁹ The Airport administration recently reorganized to ensure that a group of experts in their respective fields—operations; maintenance; engineering and environmental compliance; finance; ground transportation; and planning and development—are in place and play an equal role in the management and decision making of the Airport. Currently, the Airport employs approximately 50 individuals, about 35 in union bargaining unit positions such as maintenance and operations and 15 in non-union management and finance jobs.

C. *Board of Airport Commissioners*

The charter also creates a board of airport commissioners consisting of four legal voters of Burlington appointed by the City Council with Mayor presiding and one legal voter of South Burlington appointed by the governing body of South Burlington for three year terms (“the Airport Commission”).¹⁰⁰ Over the years the Airport Commission’s responsibility and control over the Airport has varied, as “the city council may by resolution delegate any of its powers relating to the airport to the board of airport commissioners.”¹⁰¹ Initially, commissions throughout the City of Burlington had substantial autonomy in departmental operations, but in 2000 after voters approved changes to the city’s charter concerning governance, most commissions became largely advisory, subject to delegation from the council.¹⁰² By resolution, commissions were delegated the authority to approve and submit to the mayor an annual budget recommendation.¹⁰³ The Airport Commission also retained the authority to determine the rules and regulations relating to the operation of the Airport.¹⁰⁴ Because of these delegations, the Commission exercises significant input to and influence over airport operations. For instance, most Airport decisions are expected to go to the City Council only after a discussion with and recommendation from the Commission. The Commission also provides an assessment of the Director of Aviation’s performance to the Mayor annually and an annual report to the City Council.

⁹⁷ The final report to the Council, along with the comments of committee members can be found at https://www.btv.aero/documents/SPC_FINAL_REPORT_TO_CITY_COUNCIL.pdf (last visited Dec. 1, 2019).

⁹⁸ *Id.* §122.

⁹⁹ *Id.* §276(c).

¹⁰⁰ *Id.* §§ 120, 276(a)(1)(A).

¹⁰¹ *Id.* §276(a)(3); *see also* Memorandum from J. McNeil to Frasca & Associates, LLC, *Governance Considerations of Airport Strategic Planning Committee (SPC)*, Jan. 2, 2013 at pp. 2–4.

¹⁰² Resolution of Burlington City Council entitled “Reorganization of the Governance of the City,” adopted 11/19/01, and signed by the mayor on 11/21/01.

¹⁰³ *Id.*; 24 V.S.A. app. ch. 3 § 276; *see* J. McNeil, *supra* note 101, at pp. 2–4.

¹⁰⁴ Resolution, *supra* note 102.

D. Finances

Airport finances are maintained as a separately-reported major enterprise fund of the City of Burlington.¹⁰⁵ This means that airport funds are not intermingled with general City funds, and results are reported separately from those general funds. The Airport receives support and services from many other city departments, including the City's Office of the Clerk/Treasurer (financial), City Attorney's Office (legal), Human Resources (personnel) and Police Department (security), for which it pays fees. Moody's Investor Service and Fitch Ratings maintain credit ratings for the Airport separate from the City's credit rating.¹⁰⁶

VI. Types of Governance Structures

In 2017, the United States had approximately 5,104 public airports and 14,263 private airports.¹⁰⁷ Of those, the FAA considers 555 to be commercial service airports—that is, airports with at least 2,500 passenger boardings (enplanements) and that receive scheduled service.¹⁰⁸ In 2017, 70 of these were considered primary, small hub airports like Burlington—that is, airports that enplane more than 10,000 passengers a year, but constituting only .05% to .25% of all annual passenger boardings.¹⁰⁹ The FAA also recognized 30 large hub and 31 medium hubs over that time period. Burlington was ranked number 115 based on 2017 enplanements.

Airports across the United States may be owned and/or operated by a city, a regional authority, an airport authority,¹¹⁰ a county, a state, a port authority, a different sort of public entity,¹¹¹ or even a private entity.¹¹² A 2003 survey conducted by Airports Council International-North America (ACI-NA) found that among larger airports (those with more than one million enplanements per year), 38 percent were owned and operated by a city, 17 percent by a county,

¹⁰⁵ See City of Burlington Comprehensive Annual Financial Report (CAFR) for the current year.

¹⁰⁶ On May 22, 2018, Moody's upgraded the Airport's bond rating from Baa3 to Baa2, reflecting its continued improvement in liquidity, stability in debt service coverage, and new five-year agreements with major airline. <https://www.burlingtonvt.gov/Press/moody%E2%80%99s-investors-service-upgrades-burlington-international-airport-credit-rating-to-%E2%80%9Cbba2%E2%80%9D> (last visited Nov. 11, 2019). On Sept. 19, 2018, Fitch similarly upgraded the Airport's bond rating from BBB- to BBB with a stable outlook.

<https://www.burlingtonvt.gov/Press/fitch-upgrades-burlington-international-airport-credit-rating-to-%E2%80%9Cbbb%E2%80%9D> (last visited Nov. 11, 2019). Both ratings are solidly within investment grade..

¹⁰⁷ <https://www.statista.com/statistics/185679/passengers-boarded-at-the-leading-25-us-airports/> (last visited Nov. 11, 2019).

¹⁰⁸ https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/media/cy17-commercial-service-enplanements.pdf (last visited Nov. 11, 2019).

¹⁰⁹ *Id.*

¹¹⁰ A regional or airport authority usually exists when “[s]tate and local governments have delegated decision-making responsibility for [one or] many airports to an . . . authority. This includes airport authorities representing more than one general-purpose government. . . . [T]his model rivals direct control by cities as the most common form of governance structure.” Reimer & Putnam, *supra* note 4, at p. 5.

¹¹¹ Some airports are governed by unique, or rare public entities such as state universities or special districts. *Id.* The Burlington International Airport is not unique in being owned and operated by one public entity but located within the geographic boundaries of another. *See id.* at pp. 7, 10 (“Some airports are located within the jurisdiction of a public entity that is not directly responsible for airport decision-making. These host jurisdictions may have legal authority to regulate land use by are preempted from regulating aircraft operations and safety.”).

¹¹² Oliver Wyman, Charlotte Airport Governance Study, Final Report, p. 13 (May 1, 2013), available at: <http://charmeck.org/city/charlotte/Documents/Airport%20governance%20study/20130501%20CLT%20Airport%20Governance%20OW%20vf.pdf> (last visited Nov. 11, 2019).

and 25 percent by a regional/airport authority, with the rest owned and operated by other public entities.¹¹³ A 2012 governance study had the breakdown at 36 percent city, 12 percent county, and 35 percent airport authority.¹¹⁴ In 2011 eight of the ten largest airports in the United States—measured by enplanements—were run by either a county or city governance structure.¹¹⁵

Within these broad governance structures, there are also variations. A city may own the airport and operate it as a city department (e.g. Atlanta, Los Angeles); another city may own the airport, but lease it to an airport authority whose board members are all appointed by the mayor (e.g. Sioux Falls). In some states, the state has created a special purpose authority to both own and operate the airport (e.g. Sarasota Bradenton). In other communities, a port authority responsible for not only airports, but other transportation hubs, may operate the airport (e.g. John F. Kennedy, Newark). A regional authority may be established that owns multiple airports (e.g. Susquehanna Area Regional Airport Authority—Harrisburg). Some of the governing entities are created by state legislation; some are initiated by counties or municipalities.¹¹⁶ While public entities that tried to create authorities and other special purpose governance structures initially faced legal challenges, courts generally have upheld the creation of these new political units, including the ability to tax or create public indebtedness where applicable.¹¹⁷ In general, there does not appear to be consensus on a single “best” governance structure.

A. *Municipally Owned Airports*

Typically, airports that are owned and operated by a city or county have the airport as a department within the general government entity, much like the Burlington International Airport. For example, as reported on the websites of the top six busiest airports in the United States (as calculated by FAA reports on passenger enplanements), four are owned by municipalities and operated by a city department, and one is owned by two municipalities but operated primarily by a board appointed by the owner-municipalities.¹¹⁸

¹¹³ *Id.* at Appendix A; Reimer & Putnam, *supra* note 4, at p. 4.

¹¹⁴ Oliver Wyman, *supra* note 112, at pp. 17–18 (The percentage of airports that are owned by a city is higher (45%) if the calculation is done based on percentage of enplanements as opposed to number of airports).

¹¹⁵ Oliver Wyman, *supra* note 112, at Appendix A, pp. 55-59.

¹¹⁶ *Id.* at p. 16.

¹¹⁷ Reimer & Putnam, *supra* note 4 at pp. 10–11.

¹¹⁸ See City of Atlanta Code of Ordinances §§ 2-223, 22-57 (“The airport owned and operated by the city is named the ‘William B. Hartsfield-Jackson Atlanta International Airport’ and shall be known as ‘Hartsfield-Jackson Atlanta International.’”); LAWA Governance, About LAWA, available at: <https://www.lawa.org/en/lawa-governance/about-lawa> (last visited Nov. 11, 2019) (“Los Angeles World Airports (LAWA) is the City of Los Angeles department that owns and operates Los Angeles International (LAX) and Van Nuys (VNY) general aviation airports. . . . Los Angeles World Airports is a self-supporting department of the City of Los Angeles, governed by a seven-member Board of Airport Commissioners... appointed by the Mayor and approved by the City Council.”); City of Chicago, Chicago Department of Aviation, available at: <https://www.cityofchicago.org/city/en/depts/doa.html> (last visited Nov. 11, 2019) (“The Chicago Department of Aviation (CDA) administers all aspects of two major airports – Chicago O’Hare and Midway International Airports.”); About DEN, Administration, available at: <https://www.flydenver.com/about/administration> (last visited Nov. 11, 2019) (“Denver International Airport, which is operated by Denver’s Department of Aviation, is established and governed by the City and County of Denver Municipal Charter. The Department of Aviation is an enterprise as defined by the Colorado Constitution. As an enterprise, the airport does not use any taxpayer dollars for its operation. Denver’s mayor appoints the CEO, who then serves as a member of the mayor’s cabinet and reports directly to the mayor. The Denver City Council, while having no authority over appointing the chief executive officer, has oversight of contracts and purchasing as prescribed by city rules.”). The sixth, John F. Kennedy International Airport, is operated by a regional port authority, the Port Authority of New York and New Jersey, along with LaGuardia Airport in New York and Newark Liberty

Denver International Airport (sixth busiest by passenger enplanements and largest airport by land area in the United States) operates similarly to BTW.¹¹⁹ It is owned by the City and County of Denver and is operated by the Denver Department of Aviation.¹²⁰ The mayor appoints the chief executive officer (CEO), and the city council oversees contracts and purchasing as is done for other city departments.¹²¹ The airport is run as an enterprise without using any taxpayer dollars, except those rolled over from its earlier airport.¹²²

The busiest airport (by number of passengers enplaned) in the United States, Atlanta's Hartsfield-Jackson International Airport, is owned and operated by the City of Atlanta through its Department of Aviation.¹²³ The Los Angeles International Airport is owned by the City of Los Angeles and operated by the City of Los Angeles through a department known as Los Angeles World Airports.¹²⁴ That department also operates the Van Nuys Airport, which is also owned by the City of Los Angeles.¹²⁵ The O'Hare International Airport is owned by the City of Chicago and operated by the City of Chicago's Department of Aviation, which also operates the City of Chicago-owned Midway International.¹²⁶

Dallas/Fort Worth International Airport (second largest by land area) is owned by the cities of Dallas and Fort Worth, even though it is located in two counties and includes portions of four other cities.¹²⁷ It is governed by a Board of Directors appointed by the city councils of Dallas and Fort Worth, with an additional board member representing one of the four partner cities.¹²⁸ The city councils of Dallas and Fort Worth approve the annual budgets and bond sales, but otherwise the Board of Directors operates independently.¹²⁹ Interestingly, it is reported that Dallas did not initially want to have anything to do with a jointly owned airport, and it was only

International Airport in New Jersey. See The Port Authority of New York & New Jersey, Overview of Facilities and Services, available at: <https://www.panynj.gov/about/facilities-services.html> (last visited Nov. 11, 2019). As for governance of the Port Authority of New York and New Jersey, “[t]he governor of each state appoints six members of the agency’s Board of Commissioners, subject to state senate approval.” The Port Authority of New York & New Jersey, Governance and Ethics, available at: <https://corpinfo.panynj.gov/pages/governance-ethics/> (last visited Nov. 11, 2019).

¹¹⁹ The Largest Airports in the United States, available at: <https://www.worldatlas.com/articles/the-largest-airports-in-the-united-states.html> (last visited Nov. 11, 2019); About DEN, Administration, *supra* note 118.

¹²⁰ About DEN, Administration, *supra* note 118118.

¹²¹ *Id.*

¹²² *Id.*

¹²³ City of Atlanta Code of Ordinances §§ 2-223, 22-57; Commercial Service Airports (Rank Order) 2017, *supra* note 8181.

¹²⁴ LAWA Governance, About LAWA, *supra* note 118118.

¹²⁵ *Id.*

¹²⁶ City of Chicago, Chicago Department of Aviation, *supra* note 118.

¹²⁷ The Largest Airports in the United States, *supra* note 119; Texas State Historical Association, Dallas-Fort Worth International Airport, available at: <https://tshaonline.org/handbook/online/articles/epd01> (last visited Nov. 11, 2019).

¹²⁸ DFW Board of Directors & Executive Staff, available at: <https://dfwairport.com/board/index.php> (last visited Nov. 11, 2019) (“DFW Airport’s Board of Directors is composed of 12 members, 11 of whom are appointed by the city councils of the Airport’s owner cities. Seven represent the City of Dallas and four represent the City of Fort Worth, in accordance with each city’s ownership interest in the Airport. In order to facilitate communication between and among the Airport and its neighbors, a 12th, non-voting board position representing one of the Airport’s four neighboring cities -- Irving, Grapevine, Euless and Coppell -- is filled on an annual, rotating basis.”).

¹²⁹ *Id.* (“DFW Airport Board is the main body responsible for governing DFW International Airport. The Board may enter into contracts without the approval of its owner cities’ city councils, but their approval is required for its annual budget, bond sales and other similar measures.”).

after an ultimatum to cease funding from the Civil Aeronautics Board in 1964 that the Dallas-Fort Worth Board was formed in 1965.¹³⁰

Other airports closer in size to BIA are also similarly organized. Eastern Iowa Airport is owned by the City of Cedar Rapids, Iowa and operated by a five-member commission appointed by the mayor and approved by the city council of Cedar Rapids.¹³¹ Eugene Airport in Eugene, Oregon, is owned and operated by the City of Eugene under the authority of the Department of Public Works.¹³² MacArthur Airport is owned and operated by the Town of Islip, New York through its Department of Aviation, which is led by the Commissioner of Aviation and Transportation.¹³³ Westchester County Airport near White Plains, New York, is owned by Westchester County and managed by a private operator.¹³⁴ Fresno Yosemite International Airport is owned and operated by the City of Fresno through its Department of Airports.¹³⁵

Of the airports identified above, some of their governance structures include airport commissions or advisory commissions, but others are governed directly by the legislative body of the municipality. In virtually all of the examples above, the legislative body of the owner municipality at minimum approves an annual budget and either appoints or approves the appointment of the executive director or CEO. Most, if not all, of these airports also report that they operate primarily, if not solely, using airport revenues rather than taxes.¹³⁶ Some of the airports are located solely within the owner community, but many encompass more than one community,¹³⁷ and all of them serve communities significantly greater than the owner-municipality. Significantly, almost all of these airports were initially founded by the municipality and have remained in municipal ownership throughout their history, excluding brief stints of federal ownership or control in times of war.¹³⁸ Burlington's governance falls squarely within the models adopted by these airports and communities that represent about half of the governance structures in the country.

B. Regional and Airport Authorities

Regional airport authorities frequently own and operate multiple airports. For example, the Minneapolis-Saint Paul Metropolitan Airports Commission (MAC) is a creation of state law and the owner and operator of seven airports, including the Minneapolis-Saint Paul International

¹³⁰ Texas State Historical Association, Dallas-Fort Worth International Airport, *supra* note 128127.

¹³¹ Cedar Rapids, City Boards and Commissions, Airport Commission, available at http://www.cedar-rapids.org/local_government/city_boards_and_commissions/airport_commission.php (last visited Nov. 11, 2019).

¹³² City of Eugene, OR Departments: Public Works: Airport, available at: <https://www.eugene-or.gov/9/Departments> (last visited Nov. 11, 2019).

¹³³ MacArthur Airport, About the Airport, available at: <https://www.macarthuraairport.com/about-macarthur-airport> (last visited Nov. 11, 2019).

¹³⁴ Westchester Airport, General Information, available at: <https://airport.westchestergov.com/general-information/> (last visited Nov. 11, 2019).

¹³⁵ Fresno Yosemite International Airport, Airport Management Team, available at: <https://flyfresno.com/airport-management-team/> (last visited Nov. 11, 2019).

¹³⁶ *See, e.g.*, About DEN, Administration, *supra* note 118.

¹³⁷ *See, e.g.*, Texas State Historical Association, Dallas-Fort Worth International Airport, *supra* note 128127.

¹³⁸ *See, e.g.*, Westchester Airport, About Us, available at: <https://airport.westchestergov.com/about-us/> (last visited Nov. 11, 2019); Brief History of Hartsfield-Jackson Atlanta International Airport (ATL), Jul. 27, 2016, available at: <https://saa2016atl.wordpress.com/2016/07/27/brief-history-of-hartsfield-jackson-atlanta-international-airport-atl/> (last visited Nov. 11, 2019).

Airport, in the Twin Cities area.¹³⁹ MAC is a governmental agency of the state of Minnesota and governed by a commission that is comprised of the mayors of Minneapolis and St. Paul (or designees), and a set number of individuals appointed by the governor from specific agency districts and from outside the Twin Cities area.¹⁴⁰ Forming the MAC via state law in 1943, the constitutionality of which was unsuccessfully challenged through litigation, also allowed for “better access to the government funds needed to build a large facility. The initial act establishing the MAC allowed the state to issue bonds for airports, and gave the governor \$1 million for the Minnesota Metropolitan Airports Fund to be spent at airports statewide.”¹⁴¹

Ranked twelfth in enplanements in 2017 is Orlando International Airport, which is run by the Greater Orlando Aviation Authority (GOAA) on the site of the former McCoy Air Force base. The authority also manages the Orlando Executive Airport.¹⁴² The Greater Orlando Aviation Authority is governed by a seven-member board comprised of the mayor of Orlando; mayor of Orange County; and five members appointed by the governor of Florida and confirmed by the Florida Senate.¹⁴³

Even airport authorities that operate only one airport are sometimes vested with additional responsibilities. The San Diego County Regional Airport Authority was created on January 1, 2003 via state legislation.¹⁴⁴ In addition to operating the San Diego International Airport, the San Diego County Regional Airport Authority is also responsible for planning for the future air transportation needs of the region, and serving as the region’s airport land commission, which entails supervising the adoption of land use plans that ensure health and safety surrounding all 16 of the county’s airports.¹⁴⁵ This authority is governed by a nine-person board appointed by the mayor of San Diego (individually) and mayors of surrounding areas (collectively) so as to represent all areas of San Diego County, plus three ex-officio members.¹⁴⁶

An airport authority may also be a wholly controlled by a single municipality. For example, Joe Foss Field in Sioux Falls, S.D. is a small hub airport run by an airport authority on land owned by the city and whose board is appointed by the mayor of Sioux Falls with the approval of the city council.¹⁴⁷

Two additional airport authorities recently transitioned from a different governance structure—Gerald R. Ford International Airport Authority, which now operates the Gerald R. Ford International Airport, and Albany County Airport Authority, which operates the Albany International Airport—and are discussed in more detail in Section VI below.

¹³⁹ The Metropolitan Airports Commission, available at: <https://www.metroairports.org/Airport-Authority.aspx> (last visited Nov. 11, 2019).

¹⁴⁰ MINN. STAT. § 473.604.

¹⁴¹ <https://metroairports.org/news-events/1943-mac-forms-state-support> (last visited Nov. 11, 2019).

¹⁴² Orlando International Airport MCO, About Us, available at: <https://www.orlandoairports.net/about-us/#organization> (last visited Nov. 11, 2019); Orlando International Airport MCO, Orlando Executive Airport, available at: <https://www.orlandoairports.net/orlando-executive-airport/> (last visited Nov. 11, 2019).

¹⁴³ Orlando International Airport MCO, About Us, *supra* note 142.

¹⁴⁴ San Diego International Airport, About the Airport Authority, available at: <https://www.san.org/Airport-Authority/About-the-Authority> (last visited Nov. 11, 2019).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*; San Diego International Airport, Board Members, available at: <https://san.org/Airport-Authority/Board-Members> (last visited Nov. 11, 2019).

¹⁴⁷ <https://www.sfairport.com/about-the-airport/history> (last visited Nov. 11, 2019).

C. *Other Owners*

Currently only one commercial service primary airport is privately owned or operated, the Luis Muñoz Marín International Airport.¹⁴⁸ However, a few states have airports that are operated by port authorities, such as the Port Authority of New York and New Jersey and the Port of Seattle (operator of Seattle-Tacoma International Airport). The Port of Seattle was founded in 1911 as the first public port formed through legislation,¹⁴⁹ and more than 30 years before the Sea-Tac Airport was developed by the Civilian Aviation Authority and the Port of Seattle.¹⁵⁰ The Port Authority of New York and New Jersey operates large hubs such as John F. Kennedy Airport and Newark, as well as small hubs such as Atlantic City. Port authorities typically own and operate more than one airport, in addition to also owning and operating other transportation facilities.¹⁵¹

Many airports have a history of federal control, particularly during wartime, but the Fairbanks International Airport and the Ted Stevens Anchorage International Airport are two of the more recent.¹⁵² They were constructed after authorization from the United States Congress in 1948, prior to Alaska's becoming a state in 1959. The State of Alaska gained ownership of both airports, at no cost, in 1959 through the Alaska Statehood Act of 1959, but it was not until 1961 that the Alaska State Legislature created the Alaska International Airport System (AIAS), which has been operated as a state-owned enterprise fund under the Alaska Department of Transportation and Public Facilities ever since.¹⁵³

Interestingly, not all airports in Alaska are part of the AIAS. For example, the Juneau International Airport is currently a municipally owned facility and an enterprise of the City and Borough of Juneau (CBJ) that is governed by a seven-person board appointed by the CBJ Assembly.¹⁵⁴ In the late 1940s the City of Juneau obtained a permit from the Navy to build a terminal, using federal money and City of Juneau bonds that were eventually reimbursed by the airlines.¹⁵⁵ It appears that the permit and federal funding were “contingent upon the City [of Juneau] working toward ownership of the whole airport as well as providing an adjoining seaplane base,” and by 1953 the airport was quitclaimed to the City by the federal Civil Aeronautics Administration.¹⁵⁶

¹⁴⁸ See *infra* note 243.

¹⁴⁹ *Id.*; Port of Seattle History, available at <https://www.portseattle.org/page/port-seattle-history> (last visited Nov. 11, 2019).

¹⁵⁰ Port of Seattle, Airport Basics, available at: <https://www.portseattle.org/page/airport-basics> (last visited Nov. 11, 2019).

¹⁵¹ By way of an extreme example, “[t]he Port Authority of New York & New Jersey conceives, builds, operates and maintains infrastructure critical to the New York/New Jersey region’s trade and transportation network. These facilities include America’s busiest airport system, marine terminals and ports, the PATH rail transit system, six tunnels and bridges between New York and New Jersey, the Port Authority Bus Terminal in Manhattan, and the

¹⁵² Alaska International Airport System, available at: <http://dot.alaska.gov/aias/index.shtml> (last visited Nov. 11, 2019).

¹⁵³ *Id.*

¹⁵⁴ Juneau International Airport, Airport Board, available at: <https://beta.juneau.org/airport/airport-board> (last visited Nov. 11, 2019).

¹⁵⁵ *Id.* at p. 23.

¹⁵⁶ *Id.* at pp. 23, 27.

The United States Congress, along with the Virginia State Legislature, created the Metropolitan Washington Airports Authority (MWAA) as a separate public entity in 1985.¹⁵⁷ The MWAA was also authorized to acquire Reagan National Airport and Dulles International Airport from the Metropolitan Washington Airports, which was an agency of the Federal Aviation Administration, in June 1987, at an annual lease price of \$3 million.¹⁵⁸ The MWAA is governed by a board comprised of 17 directors appointed by the governors of Virginia (7) and Maryland (3), the mayor of Washington D.C. (4), and the President of the United States (3),¹⁵⁹ and its authority over Reagan National and Dulles International is absolute.¹⁶⁰

Studies have been unable to find clear correlation between airport or community features, such as passenger volume or size of community, and form of governance.¹⁶¹ Municipally owned airports are found in densely populated areas such as Los Angeles and less populated areas such as Eugene, Oregon. Similarly, port authorities govern both large hub (JFK) and small hub (Atlantic City) airports.

VII. Determining “Best” Governance Structure

While professionals and academics have studied the topic, they have reached no consensus that a “best” governance structure exists that would fit all (or even most) communities.¹⁶² Given the barriers to change—money, time, necessity, etc.—the initial governance structure of an airport has typically remained the structure.¹⁶³

All of the governance models have strengths and weaknesses, and “studies on the effectiveness of different forms of airport governance generally have not found conclusive evidence that one type of airport governance produces superior performance.”¹⁶⁴ Proponents of municipal or general purpose government governance maintain that access to elected officials yields greater oversight and accountability, while proponents of authority or special purpose public governance maintain that authorities are run more like businesses, have a reduced level of political involvement, and are able to operate at a lower cost than municipal airports.¹⁶⁵ As the

¹⁵⁷ Metropolitan Washington Airports Authority, About the Airports Authority, available at: <http://www.mwaa.com/about/about-airports-authority> (last visited Nov. 11, 2019); *see also* 49 U.S.C. §§ 49104–49112; VA. CODE ANN. §§ 5.1-152–5.1-178.

¹⁵⁸ *See* 49 U.S.C. § 49104(a)(6)(A); 49 U.S.C. § 49104(b) (annual rent for both Reagan National and Dulles International, adjusted for inflation, \$3 million/year in 1987 dollars paid by MWAA to the general fund of the Treasury.); VA. CODE ANN. § 5.1-154.

¹⁵⁹ *See* 49 U.S.C. § 49106; VA. CODE ANN. § 5.1-155 (The appointments may also be subject to additional approvals or consent.).

¹⁶⁰ About the Airports Authority, *supra* note 157.

¹⁶¹ Reimer & Putnam, *supra* note 4, at 5.

¹⁶² Reimer & Putnam, *supra* note 4, at pp. 5–6, 21 (“This report concludes that there is no clear evidence that one form of governance is superior to others, but that more research is warranted using more extensive data and more sophisticated methods.”).

¹⁶³ Oliver Wyman, *supra* note 112, at p. 13 (From 1993 to 2013, “only two of the top 30 U.S. airports (ranked based on 2011 enplanements have changed governance types—Detroit (#17) and San Diego (#28). Of the 86 airports with over one million enplanements, seven have changed governance types over that same period” with all switching “to an airport authority or other special purpose form of governance.”).

¹⁶⁴ *Id.* at p. 26.

¹⁶⁵ *Id.* at pp. 22–25; Reimer & Putnam, *supra* note 4, at p. 7 (“Direct control by elected officials of a general-purpose government also promotes accountability by giving the electorate a chance to vote on the governing body’s airport-related decision-making. . . . [I]t is often noted that airport authorities avoid many of the civil service, contract approval, and other constraints of general-purpose governments.”).

Burlington Airport's own history indicates, ownership by a general-purpose government may lead to a need for contributions of general tax funds to the airport, but the relationship does not go the other way: under federal law, all revenue generated at an airport must, for the most part, be used for airport purposes.¹⁶⁶

According to airport-specific governance studies, the primary objectives of any governance model should be:

- a) To manage, operate and develop the airport in a safe, secure, efficient, cost effective and financially viable manner with reasonable airport user charges and equitable access to all air carriers.
- b) To undertake and promote the development of the airport lands for uses compatible with air transportation activities.
- c) To expand transportation facilities and generate economic activity in ways which are compatible with air transportation activities.¹⁶⁷

All of these objectives are linked to making the airport as efficient as possible.¹⁶⁸

VIII. Changes to Governance Structures

As discussed in the prior section, generally an airport in the United States that was founded as an authority remains an authority, and one that was founded as a municipal airport remains municipally operated. But there are exceptions.

A. *Recent Example of a Change in Governance: Grand Rapids*

In 2015, after many years of discussion, the Gerald R. Ford International Airport, in Grand Rapids, Michigan switched from being county owned and operated to being airport authority owned and operated. The Gerald R. Ford International Airport (GRR) was established in 1956 by Kent County and was operated for almost sixty years by the Kent County Department of Aeronautics.¹⁶⁹ To create the authority, the state of Michigan established the framework through legislation. Much of the process for setting up the new authority was dictated by state

¹⁶⁶ See, e.g., Grant Assurances, *supra* note 63.

¹⁶⁷ The Lindbergh Group Inc., Final Technical Report, Governance Review of the Yellowknife Airport, p. 95 (Sept. 2015), available at: https://www.inf.gov.nt.ca/sites/inf/files/resources/yzf_final_governance_report_1.pdf (last visited Nov. 11, 2019).

¹⁶⁸ *Id.*; see also Oliver Wyman, *supra* note 112, at pp. 39–40; Reimer & Putnam, *supra* note 4, at p. 22 (“Federally-obligated airports have an aspirational goal under the grant assurances to be self-sustaining, i.e., not to require subsidy from general purpose funds.”); Grant Assurances for Airport Sponsors No. 24, *supra* note 633.

¹⁶⁹ Tara Hernandez, Gerald R. Ford International Airport Authority is Ready to Fly, Jul. 1, 2016, available at: <http://www.grr.org/PDFs/NRs/nrAuthority.pdf> (last visited Nov. 11, 2019); Dan Vnuk, Gerald Ford Int'l Changes from County Governance to Airport Authority Control, Sept. 2016, available at: <http://www.airportimprovement.com/article/gerald-ford-intl-changes-county-governance-airport-authority-control> (last visited Nov. 11, 2019).

law, approved by the Kent County Board of Commissioners, and done with the consent of the FAA.¹⁷⁰

A major reason for the switch given by proponents of the regional authority was a perception that high airline fares could be reduced by a regional authority's ability to bring in low-cost airlines.¹⁷¹ They also asserted that because of changes in the air travel industry, a more nimble structure that operated autonomously and without the restrictions imposed on local government practices could better adapt and respond to the competitive environment. As one of the commissioners explained, becoming an authority would allow "the airport to truly take off—operating less like a utility and more like a commercial enterprise."¹⁷² A third reason was that a regional authority would provide better regional perspective and thus encourage broader economic development. The authority has a specific mission to continue increasing economic development in the region and focusing more on customer service.¹⁷³

The land on which GRR is located, with a carrying value of about \$21 million, remains owned by Kent County and is leased to the new authority under operating and ground leases.¹⁷⁴ When the authority began operating on July 1, 2016, all land improvements, building, and equipment were transferred to the authority, valued at approximately \$377 million. At the time of transfer, the airport was in the process of investing millions of dollars in stormwater infrastructure, parking, and other capital improvements. Liabilities were also transferred, a total of approximately \$190 million, including the long-term debt previously held by the county as revenue bonds. Airport employees were transferred from county to authority, and all service credit in pension benefits was retained in the authority's new system.¹⁷⁵

Notably, however, the GRR authority is still considered a "component unit" of the county, and its financial reports are issued as a part of the county's comprehensive annual financial report (CAFR).¹⁷⁶ All members of the authority board are appointed by the Kent County Board of Commissioners (the legislative body of the county) and consist of three commissioners, three citizens from Kent County, and one citizen from a county other than Kent.¹⁷⁷ All four citizen members are appointed by the Kent County Board of Commissioners. Thus, while the authority is now a separate corporate entity, the airport's governance remains controlled by the same local government entity that founded it.

B. Recent Example of a Change in Governance: Albany

¹⁷⁰ See 2015 Mich. Pub. Acts Act No.95; Kent County Resolution 2-12-15-11, available at: <https://www.accesskent.com/Calendar/showMinutes.jsp?year=2015> (February 12, 2015 Meeting Minutes) (last visited Nov.11, 2019).

¹⁷¹ Vnuk, *supra* note 169.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ Gerald R. Ford International Airport, Comprehensive Annual Financial Report, Period from July 1, 2016 (inception) through December 31, 2016 at p. 3, available at <https://www.grr.org/PDFs/financialreport2016.pdf> (last visited Nov. 11, 2019).

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 52.

¹⁷⁷ *Id.* at 3.

The Albany International Airport is known as America's first municipal airport, with its first field built in 1909 and the official opening at its current location in October 1928.¹⁷⁸ In 1960, apparently because the City of Albany decided that it could no longer afford the cost, it sold the airport to Albany County for \$4,437,000.¹⁷⁹ In the early 1990s the Albany County Airport tried to privatize by selling or leasing the airport facilities "to a consortium of airport developers as a way to eliminate the operating subsidies that the airport regularly drew from the county."¹⁸⁰ After the FAA objected to the privatization proposal, Albany County dropped the request and instead formed the Albany County Airport Authority.¹⁸¹

The Albany County Airport Authority was created in 1993 in the same way that the New York legislature created the Syracuse Regional Airport Authority in 2011.¹⁸² Both authorities are public benefit corporations created by state law.¹⁸³ According to the Albany County Airport Authority's financial report, the state legislature "created the Authority in order to promote the strengthening and improvements of the Airport and to facilitate the financing and construction of the initial Terminal Improvement Project (TIP), other subsequent capital improvement plans, and gave the Authority the power to operate, maintain and improve the Airport."¹⁸⁴ Albany County leased all the lands, buildings, and rights to the airport authority for 40 years and transferred its airport sponsorship to the authority with the approval of the FAA.¹⁸⁵

Similar to the GRR, the Authority is considered a component unit of the county because all of the members of the Authority's board are appointed by Albany County officials, four appointed by the majority leader of the county legislature and three by the county executive, all approved by the county legislature.¹⁸⁶ The county must approve all airport capital improvement programs and the issuance of certain debt. However, the transfer to the airport authority has relieved the county of ongoing financial obligation related to the airport.

C. *Reasons to Change Ownership or Governance Structure*

Generally, airport governance experts agree that there must be a good reason for a change in governance structure.¹⁸⁷ When public entities "have considered and implemented a transfer or delegation of power over an airport" they have done so "based on an indication or sense that the transfer or delegation would enable the airport to perform better. . . . More commonly, general-

¹⁷⁸ Albany County Airport Authority 2018 Operating Budget, Dec. 11, 2017 at p. 9-1, available at: http://flyalbany.com/uploads/files/ACAA_2018_OPERATING_BUDGET.pdf (last visited Nov. 11, 2019).

¹⁷⁹ *Id.*

¹⁸⁰ United States General Accounting Office, Testimony Before the Subcommittee on Aviation, Committee on Transportation and Infrastructure, House of Representatives, Issues Related to the Sale or Lease of U.S. Commercial Airports, Feb. 29, 1996 at p. 3, available at: <https://www.gao.gov/archive/1996/rc96082t.pdf> (last visited Nov. 11, 2019).

¹⁸¹ *Id.*; Albany County Airport Authority 2018 Operating Budget, *supra* note 178179, at p. 9-1.

¹⁸² See N.Y. PUB. AUTH. LAW § 2799-ddd(1) ("There is hereby created the Syracuse regional airport authority. The authority shall be a body corporate and politic constituting a public benefit corporation.")

¹⁸³ N.Y. PUB. AUTH. LAW §§ 2779(1)(a), 2799-ddd(1).

¹⁸⁴ Albany County Airport Authority 2018 Operating Budget, *supra* note 178, at p. 9-2.

¹⁸⁵ Albany County Airport Authority 2018 Operating Budget, *supra* note 178.

¹⁸⁶ Albany County Airport Authority Comprehensive Annual Financial Report for the Years Ended December 31, 2017 and 2016, at 4, available at http://flyalbany.com/uploads/files/2017_FINAL_CAFR_for_web.pdf (last accessed Nov. 11, 2019).

¹⁸⁷ Reimer & Putnam, *supra* note 4, at p. 16.

purpose governments have transferred power to an airport authority when the airport was perceived to be failing or in need of considerable improvement.”¹⁸⁸

For example, in 2013, the Charlotte-Douglas International Airport (CLT) retained an aviation consultant from the firm of Oliver Wyman to conduct a governance study to decide whether to change the ownership of the airport from the City of Charlotte to a new regional authority. According to reports from that study, the primary concern for most of those involved in the debate was the success of the airport: proponents for changing from a municipal owner/operator to a regional authority focused on the need for the airport to be operated like a business and be governed by a board focused solely on it (rather than overseeing the city’s competing needs); opponents noted CLT’s low airline charges, current success, and the City government’s interest in the success of the airport.¹⁸⁹

Some other reasons why an airport has chosen to switch to an authority or regional authority have included: minimizing the contractual approval process/removing barriers to effective decisions (Albany International Airport); increasing focus, efficiencies and competitiveness (Syracuse-Hancock International Airport); increasing flexibility and eliminating the need to follow state Department of Transportation requirements (Connecticut Airport Authority); and minimizing difficulties in securing fiscal year discretionary funding from the FAA (Tri-Cities Regional Airport).¹⁹⁰

Further, “[c]hanges from one form of airport governance to another do not occur frequently.”¹⁹¹ From 1993 to 2013 “only two of the top 30 U.S. airports (ranked based on 2011 enplanements) have changed governance types—Detroit (#17) and San Diego (#28).”¹⁹² All of those changes have been from a municipal, county, or state form of governance to the creation of a special purpose entity, such as an airport authority.¹⁹³

If some part of an airport’s operations are not satisfying some members of a community, governance consultants recommend numerous steps that can be taken to address concerns, shy of starting over with a new governance structure,¹⁹⁴ such as:

- Changes in airport management and personnel;
- Changes in airport-related procurement, contracting, and employment requirements.
- Creation of or changes in a board or commission that participates in airport decision making.
- Creation of or adding to an advisory board.
- Removal and reappointment of board members and commissioners.
- Reconstitution of authority board or commission to adjust interests represented.
- Changes in qualifications required to serve on a board, commission, or advisory panel.

¹⁸⁸ *Id.*

¹⁸⁹ Oliver Wyman, *supra* note 112, at p. 10.

¹⁹⁰ Clough Harbour & Associates, LLP, Airport Governance Review Executive Summary for Burlington International Airport (Nov. 2017), at pp. 2–3.

¹⁹¹ Oliver Wyman, *supra* note 112, at p. 13.

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ Reimer, *supra* note 4, at p. 8 (“[C]ommunities contemplating a change in governance structure have many different variables to adjust or recalibrate that would be more modest than dramatic changes such as transfer of operational control to an airport authority or private operator.”).

- Commercialization of particular management functions or facilities.
- Intergovernmental agreements addressing land use, environmental, and other issues.¹⁹⁵

C. *Pros and Cons of Municipal and Authority Governance*

As discussed above, there are many different opinions about whether municipal or authority is a better governance model. Studies that have explored the disadvantages of municipal governance primarily focus on efficiency—employment matters being constrained by public employment laws and salaries, public procurement rules hampering efficiency, requirements to use police or other government entities to perform work (resulting in higher costs), or politicized decision-making by elected officials slowing down activities. In contrast, these studies note that an authority is more entrepreneurial: it has a single purpose and focus and runs the airport like a business.¹⁹⁶ The advantages of municipal ownership are often overlooked and may include airport access to the expertise of other city departments, coordination of government benefits, citizens’ ability to access elected officials, and economies of scale in procurement and resources.¹⁹⁷

IX. Governance Study Comparisons

In response to questions regarding whether or not Burlington’s Airport is currently operating under the most appropriate governance structure, the Airport retained Clough Harbour & Associates LLP (“CHA”), an engineering and construction management firm with aviation and transportation experience, to perform a high-level governance comparison of five airports/airport systems that are similar to the Burlington International Airport and recently went through a change in governance structure.¹⁹⁸ A copy of CHA’s report is attached. Part of the Airport’s motivation behind conducting such a comparison was that “[a] central reason why prior studies of the governance structure impact on airport performance have been inconclusive is the difficulty in making apples-to-apples comparisons between airports.”¹⁹⁹ This difficulty of comparison is one of the reasons why there is no “best” governance model applicable to all airports, and as a result, most airports have retained their original structure.

As part of this governance comparison, CHA contacted the following airports that have changed from a single entity ownership to a special authority:²⁰⁰

Airport(s)	Previous Structure	Current Structure
Albany International Airport	County	Authority
Syracuse-Hancock International Airport	City	Regional Authority
Connecticut Airport Authority (BDL, HFD, GON, OXC, IJD, LZD)	State DOT	Authority
Asheville Regional Airport	City	Authority

¹⁹⁵ *Id.* at p. 31.

¹⁹⁶ See, e.g., New Orleans International Airport Governance, Regional Cooperation and Airport Expansion, Bureau of Governmental Research, 1999, available at <http://www.bgr.org/wp-content/uploads/2017/07/NewOrleansInternationaAriport.pdf> (last accessed Nov. 11, 2019).

¹⁹⁷ Oliver Wyman, *supra* note 112, at pp. 22-23.

¹⁹⁸ Clough Harbour & Associates, *supra* note 190.

¹⁹⁹ Oliver Wyman, *supra* note 112, at p. 28.

²⁰⁰ Clough Harbour & Associates, *supra* note 190, at p. 1.

Tri-Cities Regional Airport	Commission	Authority
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CHA asked each sponsor (airport or airports), “What was the motivation for the sponsor to move from the previous structure to an airport/regional authority (e.g. political, financial, etc.)[?]”²⁰¹ Most responded that their motivation was related to efficiencies and a desire to decrease the number of hands in the pot/competing focuses.²⁰² For example, the Albany International Airport switched from county-run to airport-authority-run because the “[c]ounty structure was too large and overbearing. . . , the approval process for contracts and purchases took a great deal of time, . . . [and d]ecisions couldn’t be made effectively.”²⁰³ Similarly, Syracuse-Hancock International Airport made the switch from city-run to regional-authority-run because “[t]he City was focused on too many other departments . . . [and o]nce it was turned into an authority . . . [t]he airport became more efficient with how it functioned”²⁰⁴

In addition to the airports studied by CHA, Burlington has been directed to an airport governance study that was done on behalf of the Charlotte-Douglas International Airport (“CLT”). This study concluded “that the best form of governance for [CLT] is a properly structured airport authority.”²⁰⁵ The report gave the following reasons for its conclusions:

1. A properly structured airport authority reduces the amount of political involvement in airport management, which enables airport managers to better concentrate on running the airport most effectively.
2. A properly structured airport board is able to function much like a corporate board to add value by focusing on and understanding the business of the airport.
3. The finances of a properly-structured authority are completely separated from that of the city/county/state in which it is located, thereby ensuring that the airport contracts and pays for only the services it needs and uses.
4. A properly structured authority is able to develop its own contracting and procurement policies, which are likely to lead to more nimble procurement and possibly lower costs.
5. A properly structured authority is able to develop a compensation system that enables it to attract and retain top talent.²⁰⁶

Notably, however, the City of Charlotte did not agree with the report’s conclusion, and CLT is still owned and operated by the City of Charlotte, following litigation.²⁰⁷ The N.C. General Assembly in July 2013 amended the city’s charter to create an airport commission as an agency of the city, consisting of 13 members (three appointed by the mayor, four by the city

²⁰¹ Clough Harbour & Associates, *supra* note 190, at p. 2 (emphasis removed).

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ Oliver Wyman, *supra* note 112, at p. 52.

²⁰⁶ *Id.* at 39-40.

²⁰⁷ Charlotte-Douglas International Airport Website, available at: <http://www.cltairport.com/> (last visited Nov. 11, 2019).

council, and the remaining six by the legislative bodies of other communities in the region).²⁰⁸ The commission was to hold the airport property and operate it on behalf of the city.²⁰⁹ After the City of Charlotte obtained a preliminary injunction, which prevented the commission from taking over the airport, the state continued to push for commission control until October 2014 when the judge issued a permanent injunction, preventing the authority from operating the airport until it receives a certificate from the FAA.²¹⁰ Needless to say, the City of Charlotte has not requested the transfer of its operating certificate to the new commission and instead continues to build on the airport's success under city operation.

Charlotte's situation is so different from Burlington's that the Charlotte study has little applicability to BIA. CLT, unlike the airports Clough Harbour Associates looked at for Burlington,²¹¹ is an extremely large hub airport with, in 2012, the highest percentage of connecting traffic of the 25 busiest airports in the United States.²¹² "CLT relies largely on connecting or transfer passengers for its scale and success, and those connecting passengers—and the airlines that serve them—have a variety of other hubs to choose from."²¹³ The CLT governance study looked to a peer group of airports for comparison purposes with the selection criteria being: (1) more than 10 million enplanements in 2011 and (2) more than approximately 50% of transfer passengers.²¹⁴ The Burlington International Airport meets neither criteria. Notably, even in CLT's position, its peer group statistical data was inconclusive when looking at cost per enplaned passenger (CPE), bond ratings, and customer service.²¹⁵

The conclusions of the Charlotte governance study seem to have been based in significant part on general preference, rather than on hard data.²¹⁶ One key reason the study concluded that an authority, rather than a general public government, was needed was because to remain competitive, CLT needs to keep its cost per enplaned passenger as low as possible—the lowest of the 25 busiest airports in the United States in 2011—so that it continues to be a hub for airlines and passengers.²¹⁷ However, the report contains no solid data to show that an authority could achieve that goal better than the municipality currently does. Burlington does not compete as a hub, but instead relies on flights to hubs like CLT to get the travelling public to/from

²⁰⁸ Judgment, *City of Charlotte v. State of N.C.*, No. 2013-CRS-12678 (Oct. 13, 2014), at 1-2, available at http://media.charlotteobserver.com/smedia/2014/10/13/13/05/1xe4si.So.138.pdf#storylink=related_inline (last visited Jan. 1, 2020).

²⁰⁹ *Id.*

²¹⁰ *Id.* at 6.

²¹¹ Oliver Wyman, *supra* note 112, at Appendix A (Charlotte International Airport was ranked 11th in terms of enplanements in 2011 with 19.5 million, while none of the airports studied by CHA ranked higher than 56th, with less than 3 million enplanements).

²¹² *Id.* at p. 5; *see also* Commercial Service Airports (Rank Order) 2017, *supra* note 81 (more than 22 million enplanements in 2017).

²¹³ Oliver Wyman, *supra* note 112, at p. 5.

²¹⁴ *Id.* at p.33.

²¹⁵ *Id.* at p. 36.

²¹⁶ *Id.* at pp. 36 ("[M]ost studies conclude, and most experts believe, that a properly structured airport authority has inherent advantages over a municipal model."), 37 ("Although we did not conduct a formal poll as part of this study, those interviewed with experience in both city or county systems and airport authority systems strongly favor a 'properly structured' authority as the best form of governance for many U.S. airports. A majority of senior airport executives interviewed were unwilling to take a public position on this subject, but believe that an anonymous poll would show that an overwhelming majority of airport directors favor an authority structure.").

²¹⁷ *Id.* at pp. 5-6, 37.

Vermont, so the considerations are not comparable, and the reasoning behind the CLT study does not readily apply to the Burlington International Airport.

X. Arguments For and Against Regionalization

On July 17, 2017 the City Council of the City of Winooski unanimously adopted a resolution that requested, among other things, that:

The Burlington City Council consider and declare that it is in the best interest of the City of Burlington, the greater Northwest Vermont region and the State of Vermont that ownership of the Burlington International Airport be transferred to the State of Vermont and that a State/Regional governing board be established to provide oversight of the management of the Burlington International Airport that would include representation from Burlington as well as other affected communities in the region and the State . . .²¹⁸

The Winooski City Council also specified the process behind forming a committee to prepare and implement a plan to transition ownership of the Airport, and what should happen if the first two requests were not initiated within a reasonable period.²¹⁹

The Winooski Joint Resolution (the City of South Burlington ended up adopting a different one²²⁰) included many “whereas” clauses that do not accurately represent the current state of the Airport or incorrectly differentiate the Airport from other municipally owned and operated airports in the country.²²¹ For example, Burlington’s enplanements are up, new airlines are serving the Airport, and new routes are available; the governance structure of the Airport is not “rare if not unique in the United States;” the Cities of South Burlington and Winooski do have a meaningful role in key aspects of the operations of the Airport, especially in relation to sound and AIP grant applications; and the City of Burlington does own the Airport, subject to certain FAA grant assurances. Further, state law, in the chapter on “Airports and Air Navigation Facilities” and the subchapter on State Aid to Municipalities Generally,” provides that “[u]pon completion of the project, title to, responsibility for, and maintenance of the airport shall rest with the municipality.”²²²

South Burlington’s City Council adopted a scaled back version of a joint resolution with limited “whereas” clauses and a request that: “1. The Burlington City Council consider forming a commission that reviews the structure of the BIA that would include representation from Burlington as well as other affected communities in the region; and 2. That the matters considered by the commission would include regional infrastructure, governance and

²¹⁸ City of Winooski Joint Resolution, available at: <https://drive.google.com/drive/folders/1z73DVhkZCk36gclwtr8blfm-sa1bhH2P> (Regular Items at pp. 22–28) (last visited Nov. 11, 2019).

²¹⁹ Winooski City Council Minutes, Jul. 17, 2017; City of Winooski Joint Resolution, *supra* note 218.

²²⁰ South Burlington City Council Minutes, Aug. 10, 2017, available at: <https://clerkshq.com/SouthBurlington-vt> (last visited Dec. 1, 2019).

²²¹ City of Winooski Joint Resolution, *supra* note 218.

²²² 5 V.S.A. § 697.

ownership.”²²³ South Burlington’s resolution does not address, although there was commentary on this fact at City Council meetings, that South Burlington does, as a matter of law, receive payments in lieu of taxes from the City of Burlington because the Airport is owned by one municipality but located in a different municipality.²²⁴

Other nearby towns, such as Colchester, Williston, and Shelburne, have not adopted any resolution addressing airport regionalization.²²⁵ A number of bills have been proposed to the Vermont Legislature, including one to require a governance study, and one to amend municipal charters to require approval from certain non-Burlington municipalities as part of specific noise planning activities, but all have failed.²²⁶ None of the bills was based on a finding of failure by the Airport to operate successfully.²²⁷

Many of the comments appear to focus on the interests of the Cities of South Burlington and Winooski in having more than just the input that current federal and city processes provide them, especially as it relates to airport noise and the home acquisition/mitigation programs. The Airport is having the Noise Exposure Maps and Noise Compatibility Program updated earlier than initially planned at the request of South Burlington; it has included representatives from the Cities of South Burlington and Winooski on both the Sound Mitigation Committee and the Technical Advisory Committee; it has committed to providing more written updates and oral presentations to all of the neighboring communities; and Burlington is currently exploring adding a seat for the City of Winooski on the Airport Commission. The Airport Commission meetings, City of Burlington Board of Finance, and City of Burlington City Council meetings are all open to the public, and materials are available on BoardDocs and the Airport’s website.

XI. Legal Considerations in Changing the Governance Structure

As discussed above, the Burlington International Airport has always been owned and operated by the City of Burlington. The City is currently authorized to own and operate the Airport by its state-law charter²²⁸ and is certified as an airport sponsor by the FAA, as required

²²³ South Burlington City Council Minutes, Aug. 10, 2017, *supra* note 220.

²²⁴ 5 V.S.A. § 754.

²²⁵ Minutes, Colchester Selectboard, Sept. 18, 2017, available at <https://clerkshq.com/Colchester-vt> (last visited Dec. 1, 2019); Town of Williston, Selectboard, Minutes of Meeting, Sept. 19, 2017, available at: [https://www.town.williston.vt.us/vertical/sites/%7BF506B13C-605B-4878-8062-87E5927E49F0%7D/uploads/Minutes_-_September_19,_2017_\(Approved\).pdf](https://www.town.williston.vt.us/vertical/sites/%7BF506B13C-605B-4878-8062-87E5927E49F0%7D/uploads/Minutes_-_September_19,_2017_(Approved).pdf) (last visited Dec. 1, 2019); Town of Shelburne, Selectboard, Minutes of Meeting, Aug. 22, 2017, available at: https://www.shelburnevt.org/AgendaCenter/ViewFile/Minutes/_08222017-823 (last visited Dec. 1, 2019) (no vote either way).

²²⁶ *See, e.g.*, H.644, available at: <https://legislature.vermont.gov/bill/status/2018/H.644> (last visited Dec. 1, 2019); H.654, available at: <https://legislature.vermont.gov/bill/status/2018/H.654> (last visited Dec. 1, 2019).

²²⁷ Interestingly, some authorities have been formed to minimize political involvement. *See* Clough Harbour & Associates, *supra* note 190, at p. 2.

²²⁸ The City’s Charter from the state currently provides that the City Council has the authority to

acquire and hold by lease, purchase, or gift and to maintain within the limits of said City, or within the limits of an adjoining town, a public aviation field and municipal airport and to properly equip the same for use; to regulate the use of said field and its equipment and to charge, receive, demand, and collect from time to time reasonable compensation for use thereof and to manage and control such field and its equipment, appoint proper officers to have charge of the same and to

under federal law. Federal and state law dictate how the governance structure of an airport can be changed.

As outlined above, over the years, the Airport has invested millions of dollars in FAA grants to maintain and expand its facilities. In doing so, the FAA requires the airport owner or sponsor to agree to certain grant assurances that affect how the airport is to be operated and maintained. Importantly, the FAA requires that the airport “sponsor [the City of Burlington] determines the management and organizational structure of an airport,” including “whether the sponsor delegates all or some of its management responsibilities to a third party.”²²⁹ Additionally, FAA grant assurance 5 requires that a “sponsor cannot take any action that may deprive it of its rights and powers to direct and control airport development and comply with the grant assurances.”²³⁰

Vermont law currently contemplates three different forms of airport and airfield ownership: private ownership, state ownership, and municipal—single or joint—ownership. Specifically, Vermont law permits any person, as defined in 1 V.S.A. § 128, to operate an airport with approval from the Transportation Board.²³¹ The State, through the Agency of Transportation, is also permitted to own and operate airports:

[T]he Agency [of Transportation] is authorized to establish, acquire, own, and operate air navigational facilities . . .²³² [T]he Secretary [of Transportation], with the approval of the Governor and the General Assembly, may acquire title by agreement or condemnation to an airport which has been discontinued by the owner as an air navigational facility. The title to the airport may be acquired by lease for the purpose of continuing its use as an airport open to the public.²³³

define their duties; to provide for the establishment and maintenance of an airport police force to provide security and law enforcement within the limits of the airport premises and to lease to private parties for aviation purposes such part of said field and buildings as in the judgment of the City Council is not for the time being required by the City for the purposes of a public aviation field or municipal airport and for such time as in the judgment of said Council the same is not so required.

24 V.S.A. app. ch. 3 § 48(50). The Airport Commission, appointed by the Burlington City Council with Mayor presiding has jurisdiction over the rules and regulations of the Airport, which are contained in Burlington Code of Ordinances Appendix E.

²²⁹ FAA Airport Compliance Manual--Order 5190.6B, §6.2, available at www.faa.gov/airports/resources/publications/orders/compliance_5190_6/ (last visited Dec. 1, 2019).

²³⁰ *Id.* §6.3b.

²³¹ 5 V.S.A. § 207(c) (“All proposed airports, restricted landing areas, and other air navigation facilities shall be first approved by the Board before they are used or operated. A municipality or person proposing to establish an airport . . . shall make application to the Board for a certificate of approval of the site selected and the general purpose or purposes for which the airport . . . is to be established to ensure that it shall conform to minimum standards of safety and shall serve public interest.”); 1 V.S.A § 128; *see also* 5 V.S.A. § 1(2) (“‘Board’ means the Transportation Board.”); *but see* 24 V.S.A. app. ch. 3 § 276 (authorizes city council to establish public airport).

²³² 5 V.S.A. § 801.

²³³ 5 V.S.A. § 804; *see also* 5 V.S.A. § 651 (The Agency of Transportation also has the power to acquire property for an airport through eminent domain).

Finally, Vermont law permits one or more municipalities in Vermont to acquire land for, and operate an airport jointly:

One or more municipalities may individually or jointly acquire real property by purchase, lease, or condemnation . . . [to] establish, construct, equip, maintain, and operate an airport . . .²³⁴ The resolution providing for such action shall be adopted by the legislative body of the municipality or municipalities . . . If there is more than one municipality, they shall create an intermunicipal committee as their joint agent to be at all times composed of members of each of the bodies to acquire necessary real property, in the name of the municipalities jointly, and to have charge of the construction, equipment, maintenance, and operation of the airport or landing field.²³⁵ The resolution may specify matters as to which the action of the committee shall require the joint approval of the bodies. It shall also prescribe the proportions of the cost of the project to be borne by the municipalities respectively.²³⁶ . . . The resolution may be amended from time to time with the concurrence of each of the bodies . . .²³⁷

Specific to the Airport, the City’s charter allows the City Council to exercise “control of all lands owned or leased and used by the city for purpose of a municipal airport” or to “by resolution delegate any of its powers relating to the airport to the Board of Airport Commissioners.”²³⁸ It is not clear that the state has the authority to acquire an airport in active use, only one that has been discontinued by the owner as an air navigational facility, except through eminent domain.²³⁹

One significant legal issue is how ownership or operational control could be transferred—for example, through purchase of an airport’s assets (property, buildings, etc.) or by lease. If by lease, “[t]he respective rights of the general- and special-purpose entities commonly will be prescribed in the lease and the authority’s enabling legislation.”²⁴⁰ Here, the City’s Charter gives City Council “the exclusive power to authorize sale or lease of any real or personal estate belonging to [the] City . . . [,]” which would cover all of the land comprising the Burlington International Airport,²⁴¹ and state law allows for one or more municipalities to “establish, construct, equip, maintain, and operate an airport, landing field, or air navigation facility and may lease or sublet the same for a term of not more than 20 years.”²⁴²

²³⁴ 5 V.S.A. § 601.

²³⁵ 5 V.S.A. § 602.

²³⁶ 5 V.S.A. § 603.

²³⁷ 5 V.S.A. § 604; *see also* 24 V.S.A. § 2742.

²³⁸ 24 V.S.A. app. ch. 3 §§ 276(a)(2), (a)(3); *see also* 24 V.S.A. app. Ch. 3 § 48(50).

²³⁹ 5 V.S.A. §§ 651, 804 (“For the purposes of establishing a permanent system of airports within the State, the Secretary, with the approval of the Governor and the General Assembly, may acquire title by agreement or condemnation to an airport which has been discontinued by the owner as an air navigational facility. The title to the airport may be acquired by lease for the purpose of continuing its use as an airport open to the public.”).

²⁴⁰ Reimer & Putnam, *supra* note 4, at p. 6.

²⁴¹ 24 V.S.A. app. ch. 3 § 55.

²⁴² 5 V.S.A. § 601 (It is not clear from this sentence whether or not the word “lease” is used to mean that the municipality or municipalities may “lease out” or “enter into a lease for” the property in question. However the first

While there is limited guidance on how to price an airport for lease or sale, some guidance can be drawn from analyses of the legal implications of airport privatization.²⁴³ The Federal Aviation Administration’s (FAA) main concern with the sale or lease of an airport is that it “would violate the obligations undertaken by the municipal owner as a condition of its federal grants. Most notable is the obligation not to divert an airport’s revenues. In broad terms, federal law requires that a public airport’s revenues be used for capital and operating costs[,]” and the FAA “generally considers sale or lease proceeds to be airport revenue that cannot be transferred to other municipal uses.”²⁴⁴ However, and “[a]lthough FAA currently considers airports’ revenues to include lease or sale proceeds . . . local governments would be entitled to recover any unreimbursed capital or operating costs that they have incurred.”²⁴⁵

The examples of other airports provide a broad range of past and current lease prices. Some examples include: a \$1/year lease for 66 years with a reversion back to the owner (San Diego International Airport in 2002),²⁴⁶ a lease with a required minimum payment of \$400,000 per year (Atlantic City International in 1986),²⁴⁷ a lease with a total reimbursement of \$478,500 over an approximately seven year period (Albany International Airport from 1998 to 2005),²⁴⁸ a \$3 million per year rental rate in 1987 adjusted for inflation (Metropolitan Washington Airports Authority for Reagan National Airport and Washington Dulles International Airport for 50 years starting in 1987),²⁴⁹ and \$5 billion over approximately 45 years with a commitment to invest an additional \$100 million in the locality (John F. Kennedy International and LaGuardia Airports in 2004).²⁵⁰

The Federal Aviation Administration can also seek reimbursement when an airport’s assets are transferred and the assets were acquired through federal grants.²⁵¹ However, the “FAA has not sought any reimbursement when airport ownership has been transferred between public

part of this statute addresses the acquisition of real property, by one or more municipalities, through “purchase, lease or condemnation” which would make the second sentence of the statute section superfluous if “lease” is being used to connote that one or more municipalities may enter into a lease for the property in question.)

²⁴³ The 1996 Reauthorization Act, codified at 49 U.S.C. § 47134, authorized the Federal Aviation Administration (FAA) to establish a five airport privatization pilot program, since upped to a ten airport pilot program. Fact Sheet – Airport Privatization Pilot Program, Aug. 14, 2018, available at:

https://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=24114 (last visited Dec. 1, 2019). However, there are currently only four airports in the program, and only one is fully privatized: Luis Muñoz Marín International Airport, which is in Puerto Rico and currently being operated by Aerostar Airport Holdings pursuant to a 40 year lease. *Id.* This does not include municipal airports that are partially privatized, such as those where the management of the entire airport has been contracted out. *See* United States General Accounting Office, *supra* note 18080, at p. 4.

²⁴⁴ United States General Accounting Office, *supra* note 180, at pp. 1–2 (emphasis added); *see also* Grant Assurances for Airport Sponsors No. 25, *supra* note 63.

²⁴⁵ United States General Accounting Office, *supra* note 1800, at p. 7.

²⁴⁶ Oliver Wyman, *supra* note 112, at p. 61.

²⁴⁷ United States General Accounting Office, *supra* note 1800, at p. 7.

²⁴⁸ Albany County Airport Authority 2018 Operating Budget, *supra* note 1798, at p. 9-2.

²⁴⁹ 49 U.S.C. § 49104(b).

²⁵⁰ John F. Kennedy International Airport and LaGuardia Airport are operated by the Port Authority of New York and New Jersey on land leased from New York City at a minimum lease price of \$5 billion plus a \$100 million commitment to fund capital projects in Queens for a lease of approximately 45 years in length for both LaGuardia Airport and John F. Kennedy International Airport. *See* Governor Pataki and Mayor Bloomberg Announce Closing of Multi-Billion Dollar Agreement to Extend Airport Leases, Nov. 30, 2004, available at: http://www.panynj.gov/press-room/press-item.cfm?headline_id=544 (last visited Dec. 1, 2019).

²⁵¹ United States General Accounting Office, *supra* note 1800, at p. 8.

entities, in part because the airport was still used for its originally intended purpose,” which would be the case if a local government leased airport facilities to a public authority.²⁵² Because the FAA needs to approve any change in airport sponsorship, it is quite likely that the FAA would be involved in any sort of valuation of a lease or sale of airport facilities as part of such transfer.

One additional consideration is that the FAA requires that an airport sponsor, such as a regional authority, have good title to the property underlying the airport facilities in order to apply for and receive AIP grant funding.²⁵³ However, the FAA views a long-term lease, more than 20 years, as indicative of the sponsor’s having good title to the necessary real property, so a long term lease from the prior airport sponsor to the new airport sponsor could suffice.²⁵⁴

Along with the acquisition of property, whether by purchase, lease or otherwise, the FAA must approve the transfer of an airport’s sponsorship pursuant to 14 C.F.R. Part 139, and let the sponsor out of its grant assurance obligations before the new sponsor is permitted to exercise control over an airport, and this is not a quick process.²⁵⁵

For a public entity to transfer all of its interest in an airport, the FAA would have to release the airport sponsor from the Grant Assurances, determine that the public entity assuming control has the requisite property interest and authority to become the airport sponsor, and authorize the transfer of Grant Assurance and other obligations to the new airport sponsor. The FAA must publish notice in the *Federal Register* of its intent to rule on any such application and provide an opportunity for public comment. Among many details, the FAA also would need to approve the transfer of an Airport Operator Certificate, and TSA would need to approve transfer of obligations under the airport security program. . . . Because airport transfers occur infrequently, the FAA has not been called upon to publish detailed procedures.²⁵⁶

This portion of a transition to a new governance structure has, historically, taken as little as four months, or longer than three years.²⁵⁷ This is the only real constraint that federal law places on what type of entity can operate an airport.²⁵⁸

The Charlotte Airport Governance Study Final Report was prepared in 2013 and provides as Appendix B three case studies, two of which were for a transition to an authority: Wayne

²⁵² *Id.*

²⁵³ Grant Assurances for Airport Sponsors No. 4, *supra* note 6363.

²⁵⁴ Reimer & Putnam, *supra* note 4, at p. 12; *but see* 5 V.S.A. § 601 (“One or more municipalities may individually or jointly acquire real property by purchase, lease, or condemnation for the purposes of this subchapter. They may establish, construct, equip, maintain, and operate an airport, landing field, or air navigation facility and may lease or sublet the same for a term of not more than 20 years.”).

²⁵⁵ 14 C.F.R. Part 139; Grant Assurances for Airport Sponsors No. 5, *supra* note 63; *see also* Oliver Wyman, *supra* note 112, at p. 46; Reimer & Putnam, *supra* note 4, at p. 19.

²⁵⁶ Reimer & Putnam, *supra* note 4, at p. 19 (citations omitted).

²⁵⁷ Oliver Wyman, *supra* note 112, at p. 47; Clough Harbour & Associates, *supra* note 198, at pp. 3–4.

²⁵⁸ Reimer & Putnam, *supra* note 4, at p. 15.

County (Detroit); and San Diego.²⁵⁹ Both case studies show that the original owners were opposed to the transition, and in one case (Wayne County) fought the transition through litigation.²⁶⁰ Obviously, any opposition to a transition will delay the process. Charlotte’s airport has not transitioned because the City opposed the transfer, and a court found that the new authority could not operate the airport without a federal operating certificate from the FAA.²⁶¹

Transition to another owner or operator would also raise issues of staffing and employee transition; the transfer of debts and assets; and either the sale or lease of airport property.²⁶² Asset valuation, especially the real property of the airport, would undoubtedly be exceedingly difficult, especially since no profits can be realized from a transfer (lease, purchase, etc.) because, as discussed above, the FAA prohibits revenue diversion from an airport governed by the grant assurances.²⁶³

XII. Conclusion and Next Steps

One of the preeminent airport law firms in the country noted:

Numerous communities across the country have examined airport governance. While a few communities have made significant voluntary changes to improve performance in the absence of a dramatic circumstance, there is a larger group of communities that have considered *but declined* to make such changes. Many studies proved inconclusive, or the political will was lacking to effect a large-scale change such as the transfer of power from a general-purpose government to a single-purpose authority.²⁶⁴

This finding led them to make three observations:

1. “[A] community must realistically examine the potential motivations for making a change in governance structure.”²⁶⁵
2. “[C]ommunities should not neglect the full range of options short of a large-scale transfer of power.”²⁶⁶

²⁵⁹ Oliver Wyman, *supra* note 112, at pp. 60–62.

²⁶⁰ *Id.*

²⁶¹ “The Commission is permanently enjoined from operating the Charlotte Douglas International Airport until it obtains the necessary operating certificate from the Federal Aviation Administration or a declaration from the Federal Aviation Administration that the Commission is permitted to operate the airport in reliance on the City’s operating certificate.” Judgment, *City of Charlotte v. State of North Carolina*, 13-CRS-12678, N.C. Superior Court, Count of Mecklenburg (Oct. 13, 2014), at 6.

²⁶² *Id.* at pp. 53–54.

²⁶³ Reimer & Putnam, *supra* note 4, at pp. 12 (“The prohibition on revenue diversion applies to all federally-obligated airports regardless of the airport governance structure. . . . [T]his greatly reduces any financial incentive to transfer an airport of decision-making responsibility for an airport because, in general, no profits can be realized from such a transaction.”), 20 (It is strongly suggested “that the transfer of an airport to another public entity (e.g., an airport authority) would be subject to the prohibition on revenue diversion.”).

²⁶⁴ Reimer & Putnam, *supra* note 4, at p. 30.

²⁶⁵ *Id.*

²⁶⁶ *Id.* at p. 31.

3. “[W]hether contemplating large or small changes, communities should comprehensively evaluate their performance and success in achieving particular goals.”²⁶⁷

Ample studies have concluded “that there is no clear evidence that one form of governance is superior to others, but that more research is warranted using more extensive data and more sophisticated methods.”²⁶⁸ Instead, the decision for each airport needs to focus on what problems exist, if any, whether all options shy of a change in ownership and governance have been tried, and what the logistical and legal ramifications of such a change are.

As for the Burlington International Airport, it has a century-long record of success and growth and is currently thriving under strong management. The City is taking steps to hear and accommodate neighboring municipality concerns and requests in its operations. It is currently and actively working towards the development of a Noise Compatibility Program that will work for all the municipalities and communities surrounding the Airport, and because the tools and funding of that program are determined by the FAA, it is unlikely that the outcomes of the NCP would be different with a different airport owner/operator. Changing the governance structure of the Airport now will lead to significant legal and logistical difficulties, and there is no clear evidence that it will accomplish the goals of those proposing regionalization without risking damage to the viability and success of the Airport.

The Airport continuously strives to improve and address public concerns. Currently, the Cities of Burlington, South Burlington, and Winooski have been discussing memorializing their respective commitments related to the airport, and Burlington is considering a charter amendment to add additional representation to the Airport Commission. These steps demonstrate Burlington’s commitment to continuous improvement of the airport, including the involvement of regional partners.²⁶⁹

²⁶⁷ *Id.*

²⁶⁸ *Id.* at p. 21.

²⁶⁹ The initial research and drafts of this report were prepared by former Assistant City Attorney Anthea Dexter-Cooper, and significant assistance and fact-checking was also provided by former Assistant City Attorney Nicholas Lopez and Deputy Director of Aviation Nicolas Longo.