UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.

Anoka Air Charter, Inc. and
Crossroads Aviation, LLC

Complainant

v.

Metropolitan Airports Commission

Respondent

FAA Docket 16-11-12

DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter before the FAA is based on a formal complaint filed in accordance with Title 14 Code of Federal Regulations Part 16, Rules of Practice for Federally Assisted Airport Enforcement Proceedings (14 CFR Part 16).

Anoka Air Charter, Inc. and Crossroads Aviation, LLC [1] (Anoka Air/Crossroads/Mr. Hayes/Complainant) has filed a formal complaint under 14 CFR Part 16 against the Metropolitan Airports Commission (MAC/Respondent), owner and operator of the Anoka County-Blaine Airport (ANE) in Blaine, Minnesota.

The Complainant alleges that the Respondent violated its federal obligations in the grant assurances required by 49 U.S.C., § 47107:[2] Grant Assurance 5, *Preserving Rights and Powers*, by failing to require all leaseholders to comply in general with the Grant Assurances; Grant Assurance 22 (f) *Economic Nondiscrimination* by not allowing Anoka Air to self-fuel its aircraft; and Grant Assurance 23, *Exclusive Rights*, by imposing an unreasonable restriction on the owners or operators of aircraft regarding the servicing of their own aircraft. Specifically, the Complainant alleges that it was harmed because MAC failed to inform Anoka Air of its right to self-fuel its aircraft (FAA Exhibit 1, Item 1, page 3).

A consequence of this failure, the Complainant contends, led to the closure of Anoka Air:

> Anoka Air had been based at ANE for nearly 20 years before MAC's action forced it to sell its aircraft and close its doors…as a result of MAC's violations of its Grant

[1] Anoka Air was an air charter business operating at the Anoka County-Blaine Airport. The Complainant also operated a fixed-base operation (Crossroads Aviation, LLC) providing services at the airport for a short time (FAA Exhibit 1, Item 1, pp. 2-3).

[2] *Grant assurances* are those commitments made by airport sponsors in return for receipt of federal funding of airport projects, as required by 49 U.S.C. § 47107.

> Assurances. Because of MAC's violations of its Grant Assurances, specifically its failure to inform Anoka Air of its right to self-fuel its aircraft, Anoka Air undertook to create a [sic] FBO, Crossroads Aviation, Inc., at ANE that would be able to supply Anoka Air with fuel.

The Complainant alleges that it has been further harmed by MAC's preferential treatment to other tenants:

> Anoka Air and Crossroads have been harmed by the preferential treatment given to the sublessees of an area known as the 'Northwest Building Area.' MAC transferred a huge portion of its remaining developable commercial airport property at ANE to Anoka County in a lease in return for financial assistance in other capital improvement projects (FAA Exhibit 1, Item 1, page 3).

The Respondent denies the allegations that it has discriminated against the Complainant and favored other tenants:

> The Complainant makes a litany of allegations against MAC that reaches back over 15 years. Many of the allegations in the Complaint are made with no reliable, probative evidentiary support; some are wholly unsupported; some are simply untrue…The facts show that, rather than discriminate against Mr. Hayes and his aeronautical business enterprises (both real and budding), MAC, its Commission, and staff have continually went well beyond what is required by MAC's Federal obligations to accommodate Mr. Hayes numerous requests and demands (FAA Exhibit 1, Item 4a, page 2).

The Respondent asserts there is also no evidence it prohibited the Complainant from self-fueling or delayed it from developing its leasehold:

> Contrary to the Complainant's allegations, MAC did not prohibit AAC [Anoka Air] from self-fueling. In fact, MAC has no record that AAC ever submitted a request to self-fuel, and Complainants provide no documentary evidence showing otherwise. Contrary to the Complainant's allegations, MAC neither unjustly discriminated against the Complainants nor delayed the development of their leaseholds…. " (FAA Exhibit 1, item 16, page 2-3).

Having reviewed the allegations presented in this complaint and the evidence of record, the Director finds the Airport is not in violation of its Federal obligations. This decision is based on Federal law and FAA policy, review of the pleadings, and supporting documentation submitted by the parties, which comprises the Administrative Record outlined in the attached FAA Exhibit 1.

II. PARTIES

A. The Respondent

The Metropolitan Airports Commission (MAC) owns and operates the Minneapolis-St. Paul International Airport and six smaller reliever airports within the metropolitan area, including the Anoka County-Blaine Airport (ANE).

The development of the airport was financed, in part, with FAA Airport and Improvement Program (AIP) funding, authorized by the *Airport and Airway Improvement Act of 1982*, as amended in 49 U.S.C. §47101, *et seq*.[3] Since 1991, MAC has accepted $7,622,339. The most recent grants awarded include

[3] The AIP provides grants to public agencies — and, in some cases, to private owners and entities — for the planning and development of public-use airports that are included in the National Plan of Integrated Airport Systems (NPIAS). ANE is in the NPIAS.

$565,741 in 2013 to rehabilitate a taxiway and $252,178 in 2015 to install airfield guidance signs and install taxiway lighting. (FAA Exhibit 1, Item 21).

B. Complainant

Anoka Air Charter, Inc. (Anoka Air) was established in 1991 by Michael Hayes, its President, CEO, and Chief Pilot to provide charter services at ANE. Anoka Air's base of operations was ANE. Before it closed in 2011, the Complainant was doing business as Anoka Air, Inc., and Crossroads Aviation, LLC, the new name reflecting the subsidiary it created in 2005, Crossroads Aviation, as an attempt to operate as a fixed- based operator[4] at ANE (FAA Exhibit 1, Item 1, pp. 2-3).

III. Background and Procedural History

A. Background

The Complainant's Account

In 1994, Anoka Air moved its charter operations to Cirrus Flight Operations under a lease agreement and became a MAC-approved subtenant of Cirrus. In 1996, Anoka Air petitioned MAC (which MAC approved) to allow it to construct a hangar in the new building area, called the Northwest Building Area, west of MAC's maintenance facility for the storage of its charter aircraft (FAA Exhibit 1, Item 1, p. 11).

The Complainant argues that it requested the right to self-fuel its air carrier aircraft at ANE in 1997, when the construction of its initial hangar facilities was nearing completion. The Complainant states that on November 15, 1999, Anoka Air and MAC entered into a lease agreement for commercial operations. The total leased area was 23,880 sq. ft. and had a sunset date of November 30, 2004. In a September 10, 2003, letter to MAC, Anoka Air requested a five-year extension of its 1996 commerical lease and requested to add "specialized commerical flight services – aircraft management" to its lease. The Complainant states that MAC turned down both requests (the extension and the additional services) at its March 3, 2004, meeting (FAA Exhibit 1, Item 1, p. 12-13).

The Complainant explains that Anoka Air created Crossroads Aviation LLC as a subsidiary with the intent of acquiring a full-service FBO lease at ANE. On June 30, 2005, Crossroads purchased from Federal bankruptcy court the FBO lease and business assets of Anoka Aviation Services, Inc., an FBO that previously operated at the airport.[5] Crossroads drafted a redevelopment and construction plan, the *Crossroads Redevelopment Plan* and submitted it to the MAC for approval, which the full commission approved at its August 2005 meeting.[6] (FAA Exhibit 1, Item 4a, page 13).

The Complainant states that the MAC also approved a deal that leased land to the County and a private developer:

> At the same meeting, the MAC also approved negotiations between staff and Anoka County wherein Anoka County transferred to the MAC roughly $2 Million in an airport specific FAA improvement grant to upgrade runway 9/27 to the MAC, [sic] plus roughly $13 Million in bond revenue paid to the MAC under the auspices of 'airport development' in exchange for a 30 year lease of 40 acres of property that was then

[4] A fixed-base operator (FBO) is a commercial entity providing aeronautical services such as fueling, maintenance, storage, and flight instruction to the public.

[5] There is no relationship between Anoka Aviation Service, Inc. and Crossroads/Anoka Air.

[6] The Respondent disputes this statement and states, "Contrary to what Complainants now claim, the full MAC Commission did not 'approve the redevelopment and construction plan and instruct staff to complete redevelopment according to MAC Ordinance." Rather, the Commission authorized the staff to begin negotiations on a redevelopment agreement with Crossroads and the necessary lease termination with the other parties" (FAA Exhibit 1, Item 4a, p. 10).

> defined 'aviation use' on the Airport Layout Plan. Although the lease[7] had a 30-year term, after 30 years, the lease becomes a 'tenancy at will.' In addition, the MAC Commission approved a 28-year exclusive sublease between Anoka County and Anoka Airport Development, LLC (FAA Exhibit 1, Item 1, p. 14).

The Complainant further notes its ongoing difficulties in relations with MAC, reasons for filing a lawsuit, and contention that MAC improperly handled an RFP:

> While MAC was dragging its feet in December 2005, with respect to getting the Crossroads Redevelopment Plan up and going, MAC published an RFP for an FBO to be built on the Anoka County property. Then, in January 2006, MAC staff demanded that Crossroads pay $2.21 million for the leases that MAC terminated as part of the approved Crossroads Redevelopment Plan. However, the figure calculated by MAC was incorrect since it had not been determined using the method that the MAC Commission agreed to use. Crossroads told MAC staff that the correct value for the leaseholds that were terminated was $197,000. As a result of the MAC's inability to follow its own rules, Crossroads was forced to file a lawsuit in Minnesota State Court in order to obtain the correct valuation on the terminated leaseholds.[8]
>
> In March 2006, with less than 50 hours remaining until responses to the RFP were due…Deputy Executive Director of the MAC staff told the MAC Commission meeting that MAC staff has no expectations that there will be any response to the RFP, and that staff seeks Commission approval to end the RFP process immediately, to remove the RFP requirement from the leases and to allow the LLC [Anoka County and Anoka Airport Development][9] to negotiate privately with parties to choose the FBO on the Anoka County property. This effectively ended MAC's involvement with the decision of who would be constructing an FBO at ANE. Moreever, this 'decision' was done without proper notice: it did not appear on the March 2006 MAC Commission meeting agenda and there was no public notice" (FAA Exhibit 1, Item 1, p. 15).

The Complainant goes on to explain its decision to begin but then soon discontinue its FBO:

> Despite the consternation presented by the failure of MAC to properly value the property, and withdrawing the RFP at the last minute, Crossroads began to operate from their leasehold as an FBO in June, 2006. At the time, Crossroads and Anoka Air had 18 employees. However, Crossroads' operation as an FBO would be short-lived. In October 2006, MAC staff issued a 'cease and desist' order to Crossroads forcing it to discontinue operations at ANE. ...[T]his was perceived by Crossroads as a legal strategy in the valuation lawsuit to put Crossroads out of business before the lawsuit could proceed" (FAA Exhibit 1, Item 1, p.s 16-17).

On December 15, 2006, Crossroads Aviation submitted an informal complaint[10] to the Minneapolis Airports District Office (ADO). The allegations in the informal complaint focused on MAC restricting its

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[7] The lease referred to here is the *Anoka County/Blaine Airport Northwest Building Area Development and Lease Agreement.* FAA Exhibit 1, Item 4a, exhibit 38. The agreement between MAC and Anoka County covering the use of the NW Building Area is the *Joint Powers Agreement.* FAA Exhibit 1, Item 4(a), Exhibit 34

[8] To settle a dispute on the amount of money payable to MAC by Crossroads for the leases that were terminated as part of the approved Crossroads Redevelopment Plan, Crossroads filed a lawsuit in Minnesota State Court in order to obtain the correct valuation on the terminated leaseholds (FAA Exhibit 1, Item 1, p. 15).

[9] LLC in this context refers to the Anoka County and Anoka Airport Development, LLC.

[10] The FAA accepts informal complaints either verbally or in writing under Title 14 Code of Federal Regulations Part 13 (Part 13), Investigative and Enforcement Procedures (Section 13.1 ONLY). FAA regional staff usually handles these complaints.

right to self-fueling and that MAC violated its own grant assurance in the *Anoka County/Blaine Airport Northwest Building Area Development and Lease Agreement* (FAA Exhibit 1, Item 18).

On June 1, 2007, MAC responded in writing to the informal complaint. On June 18, 2007, the Minneapolis Airports District Office responded to Crossroads informal complaint and dismissed it on this basis:

> The sponsor has the right and obligation to assure safety in any fueling activities and requires that all fueling facilities and operations be in accordance with all local, state and federal codes and regulations, including the Minnesota State Fire Marshall…Such restrictions are not a violation of Assurace 22(f)." Additionally, the ADO found that "The Joint Powers Agreement between Anoka County and the MAC for the Northwest Building Area subordinates the agreement to the provisions and requirements of existing and future agreements between the MAC and the United States. Therefore, MAC has not given away rights and powers to perform any or all of the terms, conditions, and assurances in the grant agreements as required by Assurance 5 (FAA Exhibit 1, Item 18, pp. 1 -2).

On November 19, 2007, the Complainant prevailed in its lawsuit about the incorrect valuation on the terminated leaseholds, and the court returned a verdict in its favor, stating that MAC had over-valued the property by $2.1 million. The Complainant states that the Court ordered MAC to sell the property at the correct value and complete the redevelopment contemplated in the Crossroads Redevelopment Agreement by December 31, 2007 (FAA Exhibit 1, Item 1, p. 17) and (FAA Exhibit 1, Item 4a, exhibit 58).

In August 2008, MAC staff and Crossroads signed a lease that would join various parcels for Crossroads to construct and operate its FBO. The lease required Crossroads to complete land improvement construction by December 2008. On December 13, 2008, Crossroads notified MAC that it had completed the improvements (FAA Exhibit 1, Item 1, p. 18).

The Complainant states that MAC's actions had effectively prevented Crossroads from receiving the financing its needed to redevelop the property:

> On May 18, 2009, four years after Crossroads purchased the assets out of bankruptcy and nearly four years after MAC approved the Redevelopment Plan, MAC and Crossroads finally joined the parcels and signed the lease. Now Crossroads could proceed with redeveloping the property, despite being far behind Key Air[11] in terms of development. However, Crossroad's financing through the SBA[12] had long since expired, since both Crossroads and the SBA expected the MAC process to take at most 180 days as per their Ordinance. Although MAC did agree to sign new updated financing agreements with Crossroad's bank and SBA, MAC staff called Crossroad's viability into question due to the economic downturn, which had the effect of blocking Crossroad's financing (FAA Exhibit 1, Item 1, p. 19).

The Complainant notes that due to financial difficulties, it listed the facility (Crossroads) for sale and on May 21, 2009, Anoka Air signed an offer to sell its facility to Malibu Aerospace and notified MAC staff, requesting that its commerical lease be transferred. The Complainant states that MAC staff postponed a decision until July 8, 2009, and at the hearing on the transfer, one MAC commisioner commented to the buyer that it could "lease a place for your business long term from our FBO [Key Air]." The Complainant

[11] Key Air is a competing FBO on the Airport.
[12] SBA means Small Business Administration.

states that soon after that meeting, Malibu Aerospace walked away from the purchase of Anoka Air's facility and leased facilities from Key Air (FAA Exhibit 1, Item 1, pp. 18-19).

The Complainant also alleges that at the same July 8, 2009, meeting, MAC approved a 24-month reduction of all ground rent (a rent abatement) for Key Air, LLC while continuing to require full rent from Crossroads and Cirrus (FAA Exhibit 1, Item 1, pp. 19).

The Respondent's Account

In its Answer, the Respondent rebuts the Complainant's allegations and asserts that despite disagreements, the evidence shows MAC has treated the Complainant fairly and supported its operations:

> The facts show that, rather than discriminate against Mr. Hayes and his aeronautical business enterprises (both real and budding), MAC, its Commission, and staff continually went well beyond what is required by MAC's Federal obligations to accommodate Mr. Hayes' numerous requests and demands. The evidence shows that, rather than preventing aeronautical activites or excluding the Complainants (actually or constructively) from its airports, MAC did much to encourage and support their growth. Although there have been disagreements over the years, MAC staff has shown deference towards Mr. Hayes … even after innumerable demands, informal Part 13 complaints, and the civil lawsuit that Crossroads brought against MAC (FAA Exhibit 1, Item 4a, pp. 2).

In its Rebuttal, the Respondent states the Complainant, not MAC, is responsible for its failed businesses. According to the Respondent, the evidence does not support the charges of noncompliance with grant assuances, nor does new, questionable information and legal theories the Complainant introduced after its initial complaint:

> Complainant's claim that MAC is to blame for their commerical failure. They allege that MAC violated its Federal obligations by preventing AAC [Complainant] from self-fueling, denying Crossroads the right to do business at the Airport, and generally denying them their preferred accomodation at the Airport. While it is unfortunate that these businesses did not succeed, MAC did not cause their failure. Complainants' allegations of noncompliance with Grant Assurances are unwarranted and unsubstantiated. In its Answer, MAC denied each of the claims made in the Complaint, providing a detailed explanation backed by extensive, contemporaneous evidentiary support. Complainant's Reply neither logically responds to the analysis provided in the Answer, nor provides reliable probative evidence to overcome the proof introduced into the administrative record by MAC. Rather, Complainants introduce new legal theories, apply their own (not FAA's) standard for assessing violations of Grant Assurances, shift some of their claims, alter assertions previously introduced as 'facts' without any explanation for the changes, and offer confusing (and irrelevant) means for interpreting contract provisions and policy statements (FAA Exhibit 1, Item 16, pp. 1 -2).

The Respondent further rebuts the allegations that MAC prohibited the Complainant from self-fueling, discriminated against its operations, delayed the development of its leaseholds, or excluded it from competing to operate an FBO. Any differences between Mr. Hayes' leases and the lease agreements of the tenants and subtenants in the NW Building Area are justified:

> Contrary to the Complainants allegations, MAC did not prohibit AAC from self-fueling. In fact, MAC has no record that AAC ever submitted a request to self-fuel, and Complainants provide no documentary evidence showing otherwise. Contrary to the

> Complainants' allegations, MAC neither unjustly discriminated against the Complainants nor delayed the development of their leaseholds. Where delays occurred, they were due to Complainants' own actions or inactions. In fact, MAC went above and beyond its Federal obligations to help Mr. Hayes carry out his business plans at ANE. Contrary to Complainants' allegations, MAC neither unjustly discriminated against the Complainants during the development or in the operation of the Northwest Building Area ("NW Building Area"), nor prevented or excluded Complainants from competing for the right to operate an FBO there. MAC believes that development in that area of the Airport occurred in accordance with MAC's Federal obligations, and any differences in the rental structure and other contractual requirements between Mr. Hayes' leases and the lease agreements of the tenants and subtenants in the NW Building Area are fully justified and reasonable under the circumstances(FAA Exhibit 1, Item 16, pp. 2-3).

Crossroads' Civil Lawsuit

The Respondent explains the background details behind MAC's approving the request to negotiate with Crossroad's redevelopment agreement and the obligations of each party involved:

> As noted above, at MAC's June 2005 Commission meeting, MAC approved the transfer of the AAS[Anoka Aviation Services, Inc.] FBO lease to AAC [Anoka Air Charter, Inc.]/Crossroads as requested by AAC. At the August 2005 Commission meeting, MAC staff was given the authority, among other things, to negotiate a redevelopment agreement with Crossroads and begin negotiations (on Crossroads' behalf) for the property interest in the adjacent four leaseholds. At that August 2005 meeting, Crossroads provided a letter signed by Mr. Hayes committing to reimburse MAC for the financial obligations incurred in connection with the redevelopment request. It was in reliance on that letter that the MAC Commissioners approved the request to negotiate a redevelopment agreement and terminate leases, in accordance with the terms of those leases,with the owners of the adjacent four leaseholds (FAA Exhibit 1, Item 4a, p. 16).

The Respondent goes on to explain that MAC sought independent appraisals to determine the compensation to be paid to the tenants whose leases would be terminated for their relocation costs and improvements on each of their respective leaseholds. When the completed appraisals were presented to Mr. Hayes, he disagreed and some adjustments were made by the appraisers. However, Mr. Hayes continued to disagree and in his civil suit argued that the appraisals were flawed, and that individuals representing MAC had made representations to Crossroads on which it was entitled to rely. Crossroads also claimed that as a result of MAC's cancellation of the RFP or selection of an FBO for the NW Building Area, Crossroads was denied the opportunity to develop on that portion of the Airport (FAA Exhibit 1, Item 4a, pp. 16-17). The Respondent clarifies the outcome of the civil suit in regards to breach of contract, the awarded damages versus those requested, and MAC's handling of the RFP process:

> [A]t the end of a two-week evidentiary trial, the jury found that MAC had breached a contract with Crossroads, and that MAC was obligated to transfer the entirety of two lots and a portion of the other two leasehholds to Crossroads. The jury determined the amount of compensation that was appropriate for the improvements on each of the terminated leaseholds. Although Crossroads had asked for over $750,000 in damages for the breach of contract, the jury awarded $97,000. The jury found that MAC has not breached its duty of good faith and fair dealing in either the hangar buyout process or the termination of the RFP process (FAA Exhibit 1, Item 4a, pp. 17-18).

The Respondent also insists, contrary to the Complainant's assertions, that it carried out the court's orders in full compliance. It equally denies it was responsible for the Complainant closing his business and that it ever issued a cease-and-desist letter:

> [T]he court ordered that MAC transfer to Crossroads certain specified leaseholds within 30 days following the entry of judgement, and that upon that transfer, Crossroads pay to MAC a total of $194,150. Contrary to Complainants' assertion, the court did not order MAC to 'complete the redevelopment contemplated in the Crossroads Redevelopment Agreement by December 31, 2007.' [Further, the Respondent states, a] closing took place on January 30, 2008, within 30 days following the entry of judgment, at which time MAC and Crossroads made their respective payments, and the specified leaseholds were transferred to Crossroads through the execution of the Second Amendment to its lease. Contrary to Complainants' assertion that 'MAC staff stalled implementation of the court's verdict until January 22, 2008, in violation of the court's order and refused to negotiate a lease to join parcels so that Crossroads could build its facility', the implementation of the court's order and execution of the Second Amendment took place in full compliance with the court's order. During the pendency of the process of acquiring the adjacent four leaseholds, Crossroads began operating its new FBO. MAC can neither confirm or nor deny Complainants' allegation that Crossroads ended its business operations at ANE in 2006. MAC does, however, deny the allegation that any cessation of business is a result of 'MAC's actions.' Specifically, MAC denies ever issuing a 'cease and desist' letter[13] (FAA Exhibit 1, Item 4a, p. 19).

The Respondent also summarizes events following Crossroads' lawsuit, pointing out the several lease amendments and other actions by MAC to accommodate the Complainant's requests and support his business operations:

> In addition, MAC consented to a leasehold mortgage and subordination agreement, and approved a commerical sublease between Crossroads and AAC to permit AAC's commercial operations at the Crossroads leasehold. On March 31, 2008, the Third Amendment was executed, which, contingent upon certain steps, preauthorized additional work to be done by Crossroads and additional property to be added to the lease. On July 21, 2008, after discussion at a special M&O Committee meeting, the Commission approved the Fourth Amendment, which would allow Crossroads to add additional area for an aircraft ramp, contingent upon certain conditions. At that time, because Crossroads was not able to meet the July 31, 2008, deadlines set forth in the Third Amendment, Mr. Hayes also requested revised deadlines. On August 25, 2008, the Fourth Amendment was executed, which authorized Crossroads to expand its ramp eastward, contingent upon the construction by Crossroads of a new public taxiway adjacent to the new easterly boundary to replace the public taxiway that Crossroads would assume as leased property.... Thereafter, on June 17, 2009, and on June 30, 2009, respectively, the Fifth Amendment and the Sixth Amendment were executed to accommodate additional Crossroads' requests (FAA Exhibit 1, Item 4a, pp. 20-21).

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[13] In an email from Gary Schmidt, Director of Reliever Airports at MAC, to Michael Hays on February 20, 2008, he stated, "You say that I ordered Crossroads to 'cease and desist' operating your FBO. That is not true. By your own admission to me, activity on the Crossroads site ceased because the lease on the trailers expired and you had to return them. If you were ordered to 'cease and desist', why have you continued to provide fueling services? Why would I wait until the end of 2006 to issue a letter of default when it was obvious you were operating from the site for months before that? More recently, you have informed us that Crossroads provided maintenance services for Anoka Air Charter. How does that jibe with an order to cease and desist? At no time on February 8, 2008 did I acknowledge or reiterate that you 'cease and desist' operating as an FBO. There is no conspiracy within MAC to prevent Crossroads from being successful" (FAA Exhibit 1, Item 4a, exhibit 65).

MAC states that beginning in mid-2008, Crossroads failed to pay the fuel flowage fees to MAC that were due under its lease. Beginning in late 2008, Crossroads also failed to pay the monthly ground rent and percentage rent to MAC due under its lease. On March 31, 2009, MAC officially provided written notice to Crossroads and its lenders that Crossroads' lease was in default for failure to pay rent. MAC states that from 2009 to 2011, MAC received only one timely payment from Crossroads and received no payments from Crossroads after January 25, 2011, (FAA Exhibit 1, Item 4a, p. 27-28).

In its Answer, MAC states that between September 2009 and June 2010, it was made aware that Anoka Air's air charter certificate was revoked by the FAA (FAA Exhibit 1, Item 4a, p. 27). *See* FAA Case No. 2009-GL-150153.

MAC also notes a final concession it made to Anoka Air:

> On September 1, 2010, AAC sold its remaining leasehold and hangar to James Patrick Harker, LLC. Since the sale resulted in a loss to AAC, MAC agreed to waive $4,969.93 in assessments so that the sale could proceed. Thus, on September 1, 2010, AAC ceased being a MAC tenant. From that point on, AAC's only presence on the Airport was as a subtenant of Crossroads (FAA Exhibit 1, Item 4a, p. 27).

Complainant's Motion to Supplement the Record

On February 19, 2014, the Complainant filed a Motion to Supplement the Record. This document supplements the record by including (a) the recently published Ordinance 118, *Reliever Airports Minimum Standards for General Aviation Commercial Aeronautical Operations*, which became effective January 1, 2014, and attached as Exhibit A, and (b) an email thread from Kelly Gerads, MAC's Assistant Director of Reliever Airports indicating that Ordinance 118 is not intended to change MAC's policy with respect to self-fueling (FAA Exhibit 1, Item 19).

B. Procedural History

November 28, 2011:	Complainant files it's Complaint and Request for Investigation Pursuant to 14 CFR Part 16, alleging that the airport sponsor was in violation of its grant assurances.
December 16, 2011:	FAA accepts the Complaint and issues a Notice of Docketing for *Anoka Air and Crossroads Aviation* v. *Metropolitan Airports Commission*.
December 21, 2011:	Respondent files a Motion for extension of time to file an Answer on behalf of the Respondent Metropolitan Airports Commission. Respondent's Answer is due on January 5, 2012.
December 29, 2011:	Unopposed Motion to approve the Metropolitan Airports Commission's request for an extension of time to file Answer.
February 6, 2012:	Respondent's Answer and Motion to Dismiss. Includes Exhibits 1 – 108. (See list of Exhibits in 4(a) pp. i – iii.)
February 22, 2012:	Motion for an extension of time to file a Reply on behalf of the Complainant, Anoka Air and Crossroads Aviation.
February 27, 2012:	Unopposed Second Motion to approve the Complainant's request for an extension of time to file a Reply.

March 2, 2012:	Letter from Randall Fiertz, Director, Airport Compliance and Management Analysis to Steven M. Taber regarding extension of time to file a Reply on behalf of Complainant, Anoka Air and Crossroads Aviation.
March 16, 2012:	Unopposed Third Motion to approve Complainant's request for an extension of time to file a Reply.
April 4, 2012:	Answer of the Metropolitan Airports Commission to Complainant's Third Motion for an extension of time to file a Reply.
April 11, 2012:	Letter from Randall Fiertz, Director, Airport Compliance and Management Analysis to Steven M. Taber regarding extension of time to file a Reply on behalf of Complainant, Anoka Air and Crossroads Aviation.
April 16, 2012:	Unopposed Motion of Complainant's request for an extension of time to file a Reply.
April 16, 2012:	Amended Unopposed Motion to approve Complainant's request for an extension of time to file a Reply.
May 7, 2012:	Unopposed Motion to approve the Metropolitan Airports Commission request for an extension of Time to file a Rebuttal.
May 8, 2012:	Affidavit of Michael Hayes.
May 8, 2012:	Letter from Randall Fiertz, Director, Airport Compliance and Management Analysis to Thomas Anderson regarding Motion for extension of time to file a Rebuttal.
June 15, 2012:	Rebuttal of the Metropolitan Airports Commission.
July 20, 2012:	Complainant's Anoka Air Charter and Crossroads Aviation Consolidated Reply to Respondent's Motion to Dismiss.
February 19, 2014:	Complainant's Motion to Supplement Record.

IV. ISSUES

Issue 1- Has the Respondent violated Grant Assurance 5, *Preserving Rights and Powers*, by failing to require all the terms, conditions and assurances contained in the airport grant agreements to be included in the "MAC Ground Lease of 38 Acres of Commercial Use Land for 30 Years to Anoka County and the Contemporaneous Anoka County Sublease to Anoka Airport Development L.L.C." (FAA Exhibit 1, Item 1, p. 29)?

Issue 2 - Has MAC violated Grant Assurance 22, *Economic Nondiscrimination* by adopting a policy prohibiting self-fueling at ANE and denying Complainant the right to self-fuel its aircraft?

Issue 3 – Has the Respondent violated Grant Assurance 23, *Exclusive Rights*, by giving preferential lease terms to the Anoka County and Anoka Airport Development LLC?

V. APPLICABLE LAW AND FAA POLICY

The following discussion pertains to (a) the FAA's enforcement responsibilities; (b) the FAA compliance program; (c) statutes, sponsor assurances, and relevant policies; and (d) the complaint process.

A. FAA Enforcement Responsibilities

The Federal Aviation Act of 1958, as amended, 49 U.S.C. § 40101, *et seq.*, assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. The federal role in encouraging and developing civil aviation has been augmented by various legislative actions, which authorize programs for providing funds and other assistance to local communities for the development of airport facilities.

In each program, the airport sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely, efficiently, and in accordance with specified conditions. Commitments assumed by airport sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation, and maintenance, as well as ensuring the public reasonable access to the airport. Under 49 U.S.C. § 47122, the FAA has a statutory mandate that airport owners comply with their grant assurances.

B. FAA Airport Compliance Program

The FAA discharges its responsibility for ensuring that airport sponsors comply with their Federal obligations through its Airport Compliance Program. Sponsor obligations are the basis for the FAA's airport compliance effort. The airport owner accepts these obligations when receiving federal grant funds or when accepting the transfer of federal property for airport purposes. These obligations in grant agreements and instruments of conveyance protect the public's interest in civil aviation and require compliance with federal laws.

The FAA designed the Airport Compliance Program to ensure the national system of public-use airports is safe, properly maintained, and that airport sponsors operate consistent with their federal obligations and the public's interest in civil aviation. The Airport Compliance Program does not control or direct the operation of airports. Rather, it monitors the administration of valuable rights, which airport sponsors pledge to the people of the United States they will protect in exchange for monetary grants and donations of federal property.

FAA Order 5190.6B, *FAA Airport Compliance Manual,* September 30, 2009, sets forth the policies and procedures for the FAA Airport Compliance Program. The order is not regulatory and is not controlling with regard to airport sponsor conduct; rather, it establishes the policies and procedures for FAA personnel to follow in carrying out the FAA's responsibilities for airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the continuing commitments airport owners make to the United States as a condition for the grant of federal funds or the conveyance of federal property for airport purposes. Among other things, the order analyzes the airport sponsor's obligations and assurances, addresses the application of the assurances in the operation of public-use airports, and helps FAA personnel interpret the assurances and determine whether the sponsor has complied with them.

The FAA compliance program is designed to achieve voluntary compliance with Federal obligations accepted by owners and operators of public-use airports that have been developed with FAA assistance. Therefore, in addressing allegations of noncompliance, the FAA will determine whether an airport sponsor currently complies with the applicable federal obligations. The FAA will also consider the successful action by the airport to cure an alleged or potential past violation of applicable federal

obligation as grounds for dismissal of the allegations. *See* e.g., *Wilson Air Center* v. *Memphis and Shelby County Airport Authority*, FAA Docket No. 16-99-10, (August 30, 2001) (Final Decision and Order).

C. Statutes, Sponsor Assurances, and Relevant Policies

The *Airport and Airway Improvement Act of* 1982, codified at Title 49 U.S.C. § 47101, *et seq.*, sets forth assurances to which an airport sponsor receiving federal financial assistance must agree as a condition before receiving the assistance. These sponsorship requirements are included in every AIP grant agreement. Upon acceptance of an AIP grant by an airport sponsor, the assurances become a binding obligation between the airport sponsor and the Federal Government.

Three grant assurances apply to the specific circumstances of this complaint.

Assurance 5, Preserving Rights and Powers

Grant Assurance 5, *Preserving Rights and Powers*, requires the airport owner or sponsor to retain all rights and powers necessary for the continued operation of the airport consistent with its federal obligations. This assurance implements the provisions of the AAIA, 49 U.S.C. § 47107(a), *et seq*.,

Assurance 5 states:

a. [The airport owner or sponsor] will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary [of Transportation], and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

b. [The airport owner or sponsor] will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.

c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial noncompliance with the terms of the agreement.

d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial noncompliance with the terms of the agreement.

e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.

f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with Title 49, United States Code, the regulations and the terms, conditions and assurances in the grant agreement and shall ensure that such arrangement also requires compliance therewith.

g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owners or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

Assurance 22, Economic Nondiscrimination

The owner of any airport developed with federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on fair and reasonable terms, and without unjust discrimination. Federal Grant Assurance 22, *Economic Nondiscrimination* deals with both the reasonableness of airport access and the prohibition of adopting unjustly discriminatory conditions as a potential for limiting access. Grant Assurance 22 implements the provisions of 49 U.S.C. § 47107(a)(1) through (6), and comprises these subsections and requirements:

Assurance 22(a).

> [The airport owner or sponsor] will make the airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

Assurance 22(b)

> In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to (1) furnish said services on a reasonable, and not unjustly discriminatory basis to all users thereof, and (2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

Assurance 22(c)

> Each fixed-base operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-base operators making the same or similar uses of such airport and using the same or similar facilities.

Assurance 22(d)

> Each air carrier using such airport shall have the right to service itself or to use any fixed-base operator that is authorized or permitted by the airport to serve any air carrier at such airport.

Assurance 22 (e)

> Each air carrier using such airport (whether as a tenant, nontenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers that make similar use of such airport and use similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.

Assurance 22(f)

> [The airport owner or sponsor] will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including, but not limited to maintenance, repair and fueling) that it may choose to perform.

Assurance 22 (g)

> In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.

Assurance 22(h)

> [The owner or sponsor] may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

Assurance 22(i)

> ...may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public."

The two subsections that relate to safety—Subsection (h) and Subsection (i) are exceptions to Subsection (a) that requires sponsors to make the airport available as an airport for public use without discrimination. These provisions permit the owner or sponsor to exercise control of the airport sufficient to prevent unsafe and inefficient conditions that would be detrimental to the civil aviation needs of the public.

FAA Order 5190.6B describes the responsibilities under Grant Assurance 22 assumed by the owners or sponsor of public-use airports developed with Federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport and to make all airport

facilities and services available on reasonable terms without unjust discrimination (FAA Order 5190.6B, Chapter 9.1).

Assurance 23, Exclusive Rights

Grant Assurance 23, *Exclusive Rights*, implements the provisions of 49 U.S.C. §§ 40103(e) and 47107(a)(4). Concerning FBOs, it requires, in pertinent part, that the owner or sponsor of a federally obligated airport determine whether:

> [i]t would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and . . .
>
> [i]f allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It [the airport owner or sponsor] further agrees that it will not, either directly or indirectly, grant or permit any person, firm or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, Untied States Code.

In FAA Order 5190.6B, *FAA Airport Compliance Manual*, the FAA discusses its exclusive rights policy and broadly identifies aeronautical activities as subject to the statutory prohibition against exclusive rights. While public-use airports may impose qualifications and minimum standards upon those who engage in aeronautical activities, the FAA's position is that any unreasonable requirement or standard that is applied in an unjustly discriminatory manner may constitute the granting of an exclusive right. Courts have found the grant of an exclusive right where a significant burden has been placed on one competitor that is not placed on another (*See* e.g. *Pompano Beach v FAA, 774 F2d 1529, (11th Cir1985))*. An owner or sponsor is under no obligation, however, to permit aircraft owners to introduce on airport property equipment, personnel, or practices that would be unsafe, unsightly, detrimental to the public welfare, or affect the efficient use of airport facilities (Order 5190.6B, Sec.11.2).

Leasing all available airport land and improvements planned for aeronautical activities to one enterprise is construed as evidence of an intent to exclude others unless it can be demonstrated that the entire leased area is presently required and will be immediately used to conduct the activities contemplated by the lease (*See* Order 5190.6B, Sec. 8.9.d *Space Limitation)*.

D. The Complaint Process

Under 14 CFR § 16.23, persons directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. Complainants shall provide a concise but complete statement of the facts relied upon to substantiate each allegation and describe how they were directly and substantially affected by the things done or omitted by the respondents (14 CFR, § 16.23(b)(3)-(4).

If these statements provide a reasonable basis for further investigation, the FAA will investigate the subject matter of the complaint. In rendering its initial determination, the FAA may rely entirely on the complaint and the responsive pleadings provided. Each party shall file documents it considers sufficient

to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance (14 CFR § 16.29).

As the proponent of a motion, request, or order, the Complainant has the burden of proof. As the party who has asserted an affirmative defense, the Respondent has the burden of proving the affirmative defense. This standard burden of proof is consistent with the Administrative Procedure Act and Federal case law. The Administrative Procedure Act states, "[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof" (5 U.S.C. § 556(d)). See also, *Director, Office of Worker's Compensation Programs, Department of Labor* v. *Greenwich Collieries*, 512 US 267, 272 (1994) and *Air Canada et al.* v. *Department of Transportation*, 148 F3d 1142, 1155 (DC Cir, 1998). In addition, Title 14 CFR § 16.229(b) is consistent with 14 CFR § 16.23, which requires that complainants submit all documents then available to support their complaints. Similarly, 14 CFR § 16.29 states that "[e]ach party shall file documents that it considers sufficient to present all relevant facts and argument necessary for the FAA to determine whether the sponsor is in compliance."

VI. ANALYSIS AND DISCUSSION

The Complainant alleges that the Respondent violated Grant Assurance 5, *Preserving Rights and Powers*, by failing to require all the terms, conditions and assurances contained in the airport grant agreements to be included in a commercial ground lease. The Complaint also alleges that the Respondent violated Grant Assurance 22, *Economic Nondiscrimination*, by adopting a policy prohibiting virtually all self-fueling and denying Complainant the right to self-fuel its aircraft. Lastly, the Complainant alleges a violation of Grant Assurance 23, *Exclusive Rights*, by giving preferential lease terms to the Anoka County and Anoka Airport Development LLC (FAA Exhibit 1, Item 1, pages 29-30 and 39-41).

Three issues require analysis to provide a complete review of the Complainant's allegations and the Respondent's compliance with applicable Federal law and policy. This Determination analyzes:

1. Whether the Respondent violated Grant Assurance 5, *Preserving Rights and Powers*, by failing to require all the terms, conditions and assurances contained in the airport grant agreements to be included in a commercial ground lease.

2. Whether the Respondent violated Grant Assurance 22, *Economic Nondiscrimination*, by adopting a policy prohibiting virtually all self-fueling and denying Complainant the right to self-fuel its aircraft.

3. Whether the Respondent violated Grant Assurance 23, *Exclusive Rights*, by giving preferential lease terms to the Anoka County and Anoka Airport Development LLC.

Issue 1-Has the Respondent violated Grant Assurance 5, *Preserving Rights and Powers*, by failing to require all the terms, conditions and assurances contained in the airport grant agreements to be included in the "MAC Ground Lease of 38 Acres of Commercial Use Land for 30 Years to Anoka County and the Contemporaneous Anoka County Sublease to Anoka Airport Development L.L.C." (FAA Exhibit 1, Item 1, p. 29)?

> Grant Assurance 5, *Preserving Rights and Powers,* states in part that the airport owner or sponsor "will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor."

Complainant's Allegations

The Complainant states that MAC has violated Grant Assurance 5 because it "has allowed leases, including Commercial Full Service FBO leases, at ANE that do not make the grant assurances binding upon the lessees and sublessees. This has put all of the other tenants in a less favorable position" (FAA Exhibit 1, Item 1, p. 29).

Additionally, the Complainant alleges that MAC allowed land designated for aviation use to be leased for purposes contrary to the grant assurance: "It has also placed the remaining undeveloped land that had been designated for commercial aviation purposes at ANE under the control of Key Air, LLC for its benefit and not the benefit of MAC or the public." The Complainant argues Grant Assurance 5 has been violated because MAC did not include language in the leases to Anoka County and Key Air that bound them to the grant assurances:

> Neither the lease to Anoka County nor the sublease to the LLC contains any clause that makes binding upon the either one of them, 'all the terms, conditions and assurances contained in the grant agreement.' A simple line or two in Section 9 'Compliance with Laws' would have sufficed. While some of the Grant Assurances are specifically mentioned, others are noticeable absent. MAC will point to clauses in the Sublease [that] 'subordinates' it to the Lease from MAC, but that it not sufficient to satisfy Grant Assurance 5.

The Complainant further contends that MAC and Anoka County have misinformed Mr. Hayes based on their ignorance of the obligations in Grant Assurance 5: "Moreover, it is apparent that MAC staff and Anoka County do not have any idea what Grant Assurance 5 requires. MAC staff and Anoka County have both told Mr. Hayes that the Grant Assurances do not apply to Anoka County and the L.L.C." (FAA Exhibit 1, Item 1, pp. 30-31).

Respondent's Defense

In its Answer, MAC states its business arrangements with the County and leases in the Northwest Business Areas have not violated its obligations under Grant Assurance 5:

> Complainants allege that MAC violated its obligations under Grant Assurance 5 when it entered into the business arrangement with Anoka County for the development and lease of the NW Building Area. Complainants contend (albeit without explanation or evidentiary support) that as a result of the alleged violation, the Developer [Anoka Airport Development LLC] received a multi-million dollar subsidy that 'destroyed Crossroads' business plan.' Complainants are wrong. MAC has taken no action with respect to its agreement with Anoka County or its subtenants that it any way would deprive MAC of the rights and powers necessary to operate the Airport pursuant to applicable Federal obligations. Moreover, there has been no subsidy – proper or improper – granted to the Developer (FAA Exhibit 1, Item 4(a). pp. 39-40).

Contrary to the Complainant's allegations, MAC states that it made sure to include language and provisions in the agreements so they (both MAC and the agreements) complied with all grant assurances:

> Because Grant Assurance 5(a) prohibits airport sponsor from 'taking or permit[ting] any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions and assurances in the grant agreement without the written approval of the [FAA], MAC has taken several steps to ensure that it can take any action necessary to comply with its Federal obligations, including inserting contract provisions that subordinate the NW Building Area agreements to MAC's Grant

> Assurances and other Federal obligations, and contract provisions that allow MAC to retain control over the selection of parties and activities that will operate in that section of the Airport.
>
> In accordance with FAA policy, the agreements covering the use of the NW Building Area, e.g., the Joint Powers Agreement (JPA) between MAC and Anoka County…the Lease between MAC and Anoka County…and the Sublease between Anoka County and the Developer…all include clauses preserving MAC's rights and powers necessary to perform any or all of the Grant Assurances. Moreover, all three documents contain terms that require compliance with any applicable Grant Assurances (FAA Exhibit 1, Item 4(a). pp. 40-41).

The Respondent cites three examples from the Joint Powers Agreement (FAA Exhibit 1, Item 4a, exhibit 34) and Northwest Building Area Development and Lease Agreement (FAA Exhibit 1, Item 4a, exhibit 38) that specify compliance with MAC's grant assurances:

Section 1.8 of the Joint Powers Agreement:

> Notwithstanding anything else to the contrary, the parties agree that fee title ownership and control of the Airport shall continue to remain at all times vested in MAC. The parties further agree that nothing in this Agreement is intended to deprive MAC of any of the rights and powers necessary to perform any and all of the terms, conditions and assurances in existing or future grant agreements entered into between MAC and the United States, or MAC and the State of Minnesota, as a condition of receipt of Federal or State airport development funds. (FAA Exhibit 1, Item 4(a), Exhibit 34, p. 5).

Section 5.9 of the Joint Powers Agreement:

> This Agreement is subordinate to the provisions and requirements of existing and future agreements between MAC and the United States, entered into as a condition of the grant of Federal airport development funds. If any provision(s) of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, or held by the Federal Aviation Administration in a Director's Determination to be inconsistent with MAC's assurances given in connection with a grant of Federal airport development funds, such provision shall be deemed stricken from this Agreement" (FAA Exhibit 1, Item 4(a), exhibit 34, p. 12).

The Amended and Restated Anoka County/Blaine Airport Northwest Building Area Development and Lease Agreement, Section 25.8:

> Nothing in this agreement shall be construed to prevent MAC from making such commitments as it desires to the Federal Government or the State of Minnesota in order to qualify for the expenditure of Federal or State funds on the Airport" (FAA Exhibit 1, Item 4(a), exhibit 38, p. 62).

MAC states in its Answer that this last provision cited in the lease makes sure all its business dealings meet its grant assurances:

> Moreover, this lease requirement encompasses compliance with all of the Grant Assurances, whether or not they are additionally and specifically mentioned in the County Lease or Developer Sublease. Thus, MAC takes the position—not just in this proceeding before the FAA, but also in its dealings with the County and its subtenants – that it has retained all the rights and powers necessary to remain in compliance with its Federal obligations" (FAA Exhibit 1, Item 4(a), p. 42).

Director's Analysis and Determination

Under Grant Assurance 5, *Preserving Rights and Powers*, an airport sponsor may not take any action that may deprive it of its rights and powers to direct and control airport development and comply with the applicable federal obligations. A violation of Assurance 5 may occur when an airport sponsor enters into an agreement with terms that result in actions that may place the sponsor in noncompliance with its federal obligations. Therefore, clauses in airport agreements that subordinate the terms of the agreement to the applicable federal obligations can help to preserve the airport sponsor's rights and powers. A subordination clause enables the airport sponsor to amend terms of an agreement that are inconsistent with the sponsor's federal obligations to conform with the applicable federal obligations. *See Platinum Aviation and Platinum Jet Center* BMI v. *Bloomington-Normal Airport Authority*, FAA Docket No. 16-06-09 (June 4, 2007) (Director's Determination), p. 14.

MAC has submitted copies of its leases to support its contention that subordination clauses are included in the obligating documents with Anoka County for the development and lease of the NW Building Area. It is clear from the Joint Powers Agreement between MAC and Anoka County, the Lease between MAC and Anoka County, and the Sublease between Anoka County and the Developer that MAC took appropriate steps to preserve sufficient rights and powers under the leases in accordance with Grant Assurance 5 (FAA Exhibit 1, Item 4(a), Exhibits 22, 34, and 45).

The Complainant, other than alleging that MAC violated Grant Assurance 5 in its lease agreements, has provided no evidence that this has occurred. It is incumbent upon a complainant to provide evidence and documentation that supports its allegation of an airport sponsor's non-compliance with its federal obligations. Given the lack of substantive evidence to support the allegation as well as the language in Joint Powers Agreement between MAC and Anoka County, the Lease between MAC and Anoka County, and the Sublease between Anoka County and the Developer, the Director has determined that MAC is not in violation of Grant Assurance 5.

Issue 2 - Has MAC violated Grant Assurance 22, *Economic Nondiscrimination* by adopting a policy prohibiting self-fueling at ANE and denying Complainant the right to self-fuel its aircraft?

The owner of any airport developed with federal grant assistance is required to operate the airport for the use and benefit of the public. Federal Grant Assurance 22, *Economic Nondiscrimination,* deals with both the reasonableness of airport access and the prohibition of adopting unjustly discriminatory conditions as a potential for limiting access. Specifically, Grant Assurance 22, *Economic Nondiscrimination,* and 49 U.S.C. § 47107 (a) (1) through (6), require the airport sponsor to make the airport available to all types, kinds, and classes of aeronautical activity on reasonable terms, and without unjust discrimination.

Grant Assurance 22(f) states, "[a federally-obligated airport] will not exercise or grant any right or privilege which operates to prevent any person, firm or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including but not limited to maintenance, repair, and fueling) that it may choose to perform."

Complainant's Allegations

The Complainant alleges that MAC's policy of prohibiting self-fueling is a "threshold issue," arguing that all of the Complainant's business troubles stem from MAC having violated its grant assurances by failing to provide the Complainant with, in writing, its policy on self-fueling:

> Had MAC complied with FAA grant assurances policy and regulation [sic], when Anoka Air requested access to its own fuel in 1997, the Complainants would not be in the position they are today. Anoka Air would still be an air carrier in the business of providing scheduled and on-demand aircraft charter under its FAA Part 135 Air

> Carrier's Certificate and would be fueling its aircraft itself. Crossroads would not even have come into existence, so there would not be any competition from MAC's Key Air enterprise....FAA Grant Assurances, Orders, Advisory Circulars and administrative case law all state that federally-obligated airport proprietors are required to provide an affirmative, written policy that defines the procedures that aeronautical users at the airport are obligated to follow in conducting self-fueling operations (FAA Exhibit 1, Item 1, p. 20).

The Complainant asserts, "There can be no doubt that MAC's rules and regulations forbid self-fueling on its airports" (FAA Exhibit 1, Item 1, p. 21).

As evidence of MAC having prohibited self-fueling,the Complainant provides an excerpt from Section XV "Fueling" of the MAC's "Reliever Lease Policies, Rules and Regulations:

> All fuel dispensing pumps and tanks must be located in accordance with all current applicable codes, and at an exact location reviewed and approved by the Lease Committee. All such fueling facilities must comply with all local, state, and federal codes and regulations, including the Minnesota State Fire Marshall [sic].
>
> Fuel dispensed on Commission's Reliever Airports is subject to the provisions of Commission Ordinance No. 87, as amended from time to time, which provides for payment to the Commission of a fuel flowage fee for all fuel delivered to the tenant's leasehold.
>
> A. Commerical Operations
>
> Commerical tenants who are granted fueling authority under their commerical lease shall be allowed to construct or operate fueling facilities on the Commission's reliever airports, provided the fueling facility is constructed within the commercial leased area and the plans are approved by the Airport Manager.
>
> A commercial tenant who has fueling authority and who wishes to install a self-service fueling facility shall do so in accordance with the Commission policy on self-service fueling facilities (Attachment D) after obtaining approval from the Lease Committee.
>
> B. Corporate Self-Fueling
>
> Corporate self-fueling rights have been granted to designated tenants at the St. Paul Downtown Airport who dispense in excess of 100,000 gallons of fuel per calendar year. Corporate self-fueling was discontiued in 1996; however, tenants who had corporate self-fueling rights at the time were allowed to continue fueling under certain conditions (FAA Exhibit 1, Item 1, p. 21).

The Complainant contends that this language precludes all self-fueling:

> There are two issues to note regarding this provision: (1) the only tenants allowed to construct or operate fueling facilities' are commercial tenants who have been 'granted fueling authority,' and (2) corporate self-fueling has been banned from MAC reliever airports since 1996, except for a few tenants at St. Paul Downtown Airport. The conclusion that can be drawn from review of these policies is that only retail sales of fuel will be allowed at MAC airport, unless you fall within the narrow class of grandfathered corporate self-fuelers (FAA Exhibit 1, Item 1, p. 22).

The Complainant also argues, "There is no mention of self-fueling in any other MAC rules or policies. This policy has not changed since it became effective on November 1, 2000.... Moreover, MAC has not granted any waivers of the self-fueling policy." (FAA Exhibit 1, Item 1, page 22).

> The Complainant argues that because MAC's policy prohibits self-fueling on its face, it is at odds with FAA grant assurances, FAA orders, FAA advisory circulars, and the FAA administrative case law (FAA Exhibit 1, Item 1, page 23).

The Complainant states that MAC violated Grant Assuance 22 because it either directly prohibited self-fueling or discouraged it by not providing a clear self-fueling policy:

> As indicated in the pleadings for this matter, MAC has either prohibited self-fueling or has failed to provide any guidance as to whether it is or is not prohibited as to discourage its practice. This Ordinance, although exempting self-fueling from the applicability of the Ordinance, does nothing to clarify how self-fueling may be accomplished at Reliever Airports in the MAC system. Instead, it simply states that 'self service activites (of which self-fueling is apparently one) may be conducted in accordance with with applicable Commission rules, regulations and policies, and applicable provisions set forth in a written agreement with Commission.... Without more, aircraft owners risk violating MAC rules by fueling their own aircraft" (FAA Exhibit 1, Item 19, p. 3).

Respondent's Defense

In its Answer and Motion to Dismiss, the Respondent argues that its rules and regulations do not prohibit self-fueling; rather, the Complainat has misinterpreted MAC policy:

> Complainants' claim that "MAC's rules and regulations forbid self-fueling on its airports is based on a narrow and contrived reading of MAC's Reliever Lease Policies, Rules and Regulations." In fact, neither the relevant provisions nor the historical record supports Complainant's claim. Complainant's argue that 'the only tenants allowed to construct or operate fueling facilities are commerical tenants who have been granted fueling authority.' Assuming, arguendo [for the sake of argument], that Complainants' assertions were correct, which they are not, such limitation would not be a violation of MAC's Grant Assurances. FAA has determined the right to fuel aircraft and the right to store fuel at an airport are not necessarily the same....However, Complainant's assertion does not accurately reflect MAC's policy. Even the most cursory reading of Section XV.A, which is quoted by the Complainant provides no support for their allegation. The text of the policy merely affirms that'[c]ommercial tenants who are granted fueling authority under their commercial lease shall be allowed to construct or operate fueling facilities on the Commission's reliever airport, provided the fueling facility is constructed within the commercial leased area and the plans are approved by the Airport Manager' (FAA Exhibit 1, Item 4a, pp. 30-31).

The Respondent also states that part of the Complanaint's misinterpretation of the MAC policy relates to the different meanings of *corporate tenants* and *commercial operators* as well as its misunderstanding the exclusion specified for St. Paul Downtown Airport. The Complainant's own uncertainty about its right to self-fuel was eliminated when he began CrossroadsAviation LLC:

> First, neither Crossroads nor AAC has ever been corporate tenants of MAC – both business entities were commercial operators. Second, Complainants were based at ANE, not the St. Paul Downtown Airport. Third, even if MAC prohibited self-fueling as a matter of policy which it does not and never has, Mr. Hayes acquired fuel storage rights

> at ANE when he acquired the commercial rights to sell aviation fuel, together with the equipment necessary to store the fuel at the Airport through Crossroads. Thus, Complainants would have been able to store fuel and self-fuel pursuant to Crossroads commerical rights beginning in June 2005. Complainant's attempts to make them out to be something that they are not has no basis in fact and should be rejected (FAA Exhibit 1, Item 4a, p. 32).

The Respondent further notes, Complainant has not produced evidence that it ever requested rights to self-fuel or that MAC ever denied the Complainant this right.

> As stated in the Factual Background.... MAC has no record of ever having received a request from AAC seeking the right to self-fuel, or of having denied it. Complainants, on the other hand, claim to have documentation supporting the request and the denial.... MAC has sought such documentation from Mr. Hayes. Despite several promises to make the documentation available, however, MAC has received nothing further from Mr. Hayes, his legal counsel, or anyone else at AAC. MAC is unable to fully respond to the statements allegedly attributed to its staff that are devoid of context. Given the out-of-context nature of the other accusations contained in the formal complaint, MAC asks that FAA weigh this 'evidence' accordingly (FAA Exhibit 1, Item 4a, p. 33-34).

In its Rebuttal, MAC argues that if the Complainant was confused about MAC's self-fuel policy, it never requested any clarification:

> Firstly, if the guidance confused the Complainant, as they claim, a reasonable person would have sought MAC's clarification as to its meaning and applicability. MAC has no record of the Complainants' ever seeking such clarification, and Complainants introduce no such evidence. If, at the time the alleged confusion arose, Complainants had any questions regarding the Reliever Airport Policies, they could have – and should have – asked MAC to clarify (FAA Exhibit 1, Item 16, p. 9).

Director's Analysis and Determination

In the Complainant's Motion to Supplement (FAA Exhibit 1, Item 19, Appendix A), the Complainant provided a copy of the MAC's Ordinance No. 118, Reliever Airports Minimum Standards for General Aviation Commercial Aeronautical Operations.

Section 1.36, Self-Service, states:

> Services performed on an Aircraft by an Aircraft owner, or his or her employees, using equipment owned by the Aircraft owner and resources supplied by the Aircraft owner, including: self-fueling, repair, maintanence, cleaning, and general services. Self-services cannot be contracted out to another party. Cooperative activities and the sharing of vehicles, employees, and resouces is not considered self-service and is not permitted (FAA Exhibit 1, Item 19, Exhibit A, p. 5).

Ordinance No. 118, also provided by the Complainant in its Motion, states that self-service activities, including self-fueling *are allowable*. The Complainant, in turn, argues that the information provided on self-service and self-fueling is not clear, stating, "what this provision does is raise more questions than it answers." The Complainant questions whether commingling fuel with another operator would be considered "self-service," but as clearly stated in the Ordinance, "Cooperative activities and the sharing of vehicles, employees, and resouces is not considered self-service and is not permitted." (FAA Exhibit 1, Item 19, page 4)

Given these excerpts from Ordinance No. 118, it is unclear to the Director why the Complainant construes that MAC has failed to provide guidance and direction regarding whether self-fueling activities are allowed. There is no evidence provided that the Complainant sought clarification or additional information over and above what MAC has provided publically on how to conduct self-fueling activities if the guidance was unclear. The record does not contain evidence of efforts by the Complainant to clarify any alleged ambiguities.

The Complainant cites two past 14 CFR Part 16 complaints as precedent for its argument that MAC should have provided a clear policy allowing for sale and efficient self fueling, *Cedarhurst Air Charter Inc.* v. *Waukesha County, Wisconsin*, Docket 16-99-14 and *Gate 9* v. *DeKalb County*, Docket 16-05-13.

In the case of *Cedarhurst Air*, the Director found that the County prevented Cedarhurst from self-fueling on the airport, as was implied by the County's statement: *"[N]*o promises are being made to you or your client that self-fueling will be allowed in the foreseeable future or ever, and no promises are being made as to the conditions under which self-fueling would occur if permitted. This information is being provided to you only for the purposes of indicating that the County is now prepared to deal with its policy on this issue at some time in the foreseeable future" (*Cedarhurst Air Charter Inc.* v. *Waukesha County, Wisconsin*, Docket 16-99-14, Final Agency Decision p. 5 (Aug. 7, 2000)).

That is not the case in the present matter. The Director finds no evidence that MAC has denied its users the right to self-service and self-fuel their aircraft, rather, Section XV "Fueling" of the MAC's "Reliever Lease Policies, Rules and Regulations, contain language that clearly provides for self-fueling to be conducted as well as in Ordinance 118, Minimum Standards.

The difference between this instant case and that of *Cedarhurst Air* is that here MAC has not published statements that self fueling cannot be done by tenants, rather, it has published an Ordinance that expressedly allows self fueling (section 1.36) and provides guidance reflecting the requirement of Grant Assurance 22(f), *Economic Nondiscrimiation*.[14]

In addition, the Complainant cites *Gate 9*: "The FAA considers it inappropriate to provide Federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities" (*Gate 9* v. *DeKalb County*, Docket 16-05-13, Director's Determination p. 7 (Feb. 1, 2006)).

It is unclear what specific point the Complainant is making with citing this statement. Here again, the Director finds no persuasive evidence in the pleadings that show that MAC is or has denied a tenant the ability to self-fuel its aircraft. The Complainant has not provided information or evidence that demonstrate that MAC has restricted self-service.

Significantly missing from the record in this proceeding is a written request from the Complainant to MAC to perform self-fueling activities and a denial of such a request from MAC.

In an Affidavit of Michael Hayes, former Chief Executive Officer of Anoka Air Charter, he stated, "In the 1996-1997 time period, Anoka began asking MAC Staff for control of its fuel source and ability to fuel its own aircraft (i.e., self-fueling rights) for Anoka's Air Carrier aircraft at ANE." (FAA Exhibit 1, Item 13, p. 1).

Although the Complainant alleges that it was denied the ability to self-fuel, it also admits that the question is not whether MAC "rejected an isolated request to self-fuel...." (FAA Exhibit 1, Item 17, p.

[14] Grant Assurance 22(f) states, "It will not exercise or grant any right of privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees, including but limited to maintenance, repair, and fueling that it may choose to perform.

10). Without more persuasive evidence that a bona-fide attempt was made to negotiate the terms and conditions for Anoka to self-fuel, the Director cannot reasonably find that MAC denied Anoka the right to self-fuel.

Issue 3 – Has the Respondent violated Grant Assurance 23, *Exclusive Rights*, by giving preferential lease terms to the Anoka County and Anoka Airport Development LLC?

Grant Assurance 23, *Exclusive Rights*, states in part that an airport sponsor "will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public."

Complainant's Allegations

The Complainant states that MAC gave concessions to Anoka County and the Anoka Airport Development LLC (LLC) that it did not give to other similarly situated FBOs:

> In the sublease between Anoka and the LLC, there is no mention of when the LLC had to begin paying rent. Section 6.1.1 "Definitions," of the August 16, 2005, Master Ground Sublease and Development Agreement between the County of Anoka and Anoka Airport Development LLC...defines Payment Date as: '...the first day of each month during the term of this Agreement, commencing the First month in which any LLC Improvments are placed in service and LLC receives payments under any sublease....the First Complete and Superseding Amendment to the Master Ground Lease and Developmenet Agreement of November 27, 2007...cannot be any clearer. Section 7.2,'Ground Rent and Commencement,'states that LLC's rent payments will commence.
>
> By the County, in its reasonable discretion, by written notice to the LLC and shall become binding unless the LLC, within thirty (30) days after receipt of such notice, objects in a writing delivered back to the County within such time. If the LLC objects to any of the County's determinations, the LLC and the County shall promptly meet and endeavor to resolved the matters in dispute (FAA Exhibit 1, Item 1 p. 39-40).

Based on these terms, the Complainant argues, "So, as of November 27, 2007, LLC did not owe the County anything until the County demanded it. Even then, the LLC could object and ask for arbitration (FAA Exhibit 1, Item 1 p. 40).

The Complaint argues that the LLC, therefore, was not held to the same requirement to pay rent as it was:

> [C]ommencement of payment of the ground rent is discretionary on the part of Anoka County. This is a violation of FAA Grant Assurance 22 and 23, since those same terms were not offered to similarly situated FBOs at ANE, including Anoka Air and Crossroads and Cirrus Flight Operations. When one combines the fact that paying ground rent is discretionary and the agreement between the parties that the County will not charge ground rent for at least 24 months, the FAA Grant Assurance violations become even clearer. Moreover, when Crossroads inquired in writing about receiving the same treatment as the LLC, it was told that LLC was not subject to the same rules as the other FBOs at the airport because Northwest Building Area was not subject to the FAA Grant Assurances (FAA Exhibit 1, Item 1, p.41).

Respondent's Defense

The Respondent states that MAC treated all commerical tenants equally, in particular by providing a temporary rent reduction that included the Complainant:

> In response to a request for rent relief from a number of commerical tenants, on July 8, 2009, MAC's M&O Committee considered a temporary rent reduction applicable to commerical tenants (which at the time included Crossroads and ACC) at all of MAC's reliever airports. Contrary to the Complainant's assertion that a rent abatement was approved only for ground rent paid by Key Air, and that the other two FBO operators 'must continue to pay full ground rent (Complaint at 19), the Commission instituted a rent credit applicable to all commerical tenants at all reliever airports. The rent reduction was phased on a percentage basis over the course of one year, and was applied as a credit to the accounts of all commercial tenants that paid commercial ground rent pursuant to MAC Ordinance 107. Pursuant to this action, Crossroads and AAC received credits in the amounts of $5,118.52 and $142.00, respectively (FAA Exhibit 1, Item 4a, p. 24).

The Respondent also notes that the County and the County's subtenants, which included Key Air, however, did not receive rent reductions, contrary to the Complainant's claim:

> As noted above, the temporary rent reduction was applied to all commerical tenants that paid commerical ground rental rates pursuant to MAC Ordiance 107. Since the County had paid $13.7 million in ground rent in advance for the entire lease term of the NW Building area, and, therefore, did not pay commerical ground rental rates pursuant to MAC Ordinance 107, neither the County, the County's subtenant, nor the FBO in the NW Building Area, (Key Air) were eligible to participate in the temporary rent reduction pursuant to this action. Neither the MAC M&O Committee nor the MAC Commission approved a 24-month or any other abatement of ground rent for Key Air, as alleged by the Complainants (FAA Exhibit 1, Item 4a, p. 24).

In its Answer, the Respondent stated that it had taken several steps to ensure that it could take any action necessary to comply with its Federal obligations including inserting contract provisions that subordinate the NW Building Area agreements to MAC's grant assurances and other Federal obligations, and in contract provisions that allow MAC to retain control over the selection of parties and activities that will operate in that section of the Airport. MAC has stated that all its leasses "include clauses preserving MAC's rights and powers necessary to perform any or all of the Grant Assurances. Moreover, all three documents contain terms that require compliance with any applicable Grant Assurance" (FAA Exhibit 1, Item 4a, pp. 40-41).

The Respondent also notes that in addition to the subordination provisions, MAC has preserved its rights and powers over the NW Building Area by development leasing. These provisions, among other things, specifically define the use that may be performed on the 39-acre premises, set parameters on any subleasing, maintain consent authority over commerical subleases, and require MAC's written approval for all improvements or changes made on the premises, including plans and specifications for all construction, hangar layout, fuel tank locations, utility corridors, etc (FAA Exhibit 1, Item 4a p. 44).

The Respondent concludes by stating that the Complainants have failed to demonstrate how differences in ground rental rates create an exclusive right to conduct FBO operations at ANE. The County Lease and Developer Sublease specifically provides that no exclusive right can be granted. The Respondent states, "The fact that the Complainant does not enjoy the ability to offer every variety of aeronautical services upon terms it deems sufficiently advantageous or at the location of its choice does not constitute the granting of an exclusive right. Crossroads was not excluded from the Airport or from the benefit of its bargain with MAC. Therefore, this claim should be dismissed" (FAA Exhibit 1, Item 4a, p. 61).

Director's Analysis and Determination

The Complainants have failed to identify how the differences in lease terms or ground rent constitute an unjust economic discrimination and a prohibited exclusive right. The differences can be reasonably

explained and justified, however, by the different leasing circumstances, financing terms, payment schedule, and dates the leases were negotiated.

In 2005, the County proposed a collaborative financing approach to airport development, which became the Joint Powers Agreement. The approach included combining public sector funds from MAC, the Federal government, the Minnesota Department of Transportation, and the County, with private sector capital from a development group (Developer). With these funds, the County would lease from MAC the NW Building Area. This became the *Anoka County/Blaine Airport Northwest Building Area Development and Lease Agreement.* This $12.7 million, 27-year lease for ground rent would be paid in advance for the entire lease term so MAC could use the up-front payment for its desired improvements. The County also agreed to pay approximately an additional $2.5 million in rent if MAC were unable to secure Federal funding toward eligible portions of the desired improvements. The County proposed to use tax increment financing to pay for its share of the MAC-constructed airport improvements (FAA Exhibit 1, Item 4a, p. 11-12).

The lease with the County for the NW Building area was negotiated and signed in 2005, and the lease with Crossroads was signed in 2001. It is reasonable to expect leases signed almost four years apart would differ. Additionally, the fact that the rent for the NW Building Area was paid in advance rather than on a month-to-month basis can account for different negotiated lease terms and rent (FAA Exhibit 1, Item 4a, p. 11-12). The differences in the two leaseholds alone justify any difference in rent paid by the leaseholders.

It is possible that unjustly discriminatory terms or unreasonable standards can create the constructive granting of an exclusive right. In this case, however, the Complainant has not argued that its rates are unreasonably restrictive, nor has the Complainant established that the sponsor unjustly prevented Crossroad's expansion. The Complainant has argued, but failed to establish, that the lease and terms to the County for the NW Building Area are unjustly discriminatory to the Complainant.

The Director does not find that the MAC has unjustly discriminated against the Complainant nor did its actions constitute the constructive granting of an exclusive right. Furthermore, the Complainant has failed to show how it had been excluded by the MAC from offering general aviation FBO services.

Therefore, the FAA finds that the Respondent did not grant an exclusive right.

VI. FINDINGS AND CONCLUSIONS

Upon consideration of the submissions, responses by the parties, the record herein, applicable law and policy, and for the reasons stated above, the Director of the FAA Office of Airport Compliance and Management Analysis finds that the Metropolitan Airports Commission is currently not in violation of Grant Assurance 5, *Preserving Rights and Powers*, Grant Assurance 22, *Economic Nondiscrimination*, or Grant Assurance 23, *Exclusive Rights*.

VII ORDER

Accordingly, it is ordered that:

1. The complaint is dismissed; and
2. All motions not expressly granted in this Determination are denied.

VIII RIGHT OF APPEAL

The Director's Determination is an initial agency determination and does not constitute a final agency action subject to judicial review under 49 U.S.C. § 46110. Any party to this proceeding adversely

affected by the Director's Determination may appeal this initial determination to the FAA Associate Administrator for Airports pursuant to 14 CFR §16.33(c) within 30 days after service of the Director' s Determination.

April 25, 2017

Kevin C. Willis
Director, Office of Airport Compliance
and Management Analysis

Date