

**UNITED STATES DEPARTMENT OF
TRANSPORTATION FEDERAL AVIATION
ADMINISTRATION WASHINGTON, DC**

**Mark Smith, Kim Davidson Aviation, Inc., Bill's Air
Center, Inc., Justice Aviation, Inc., NBAA, Inc., and
AOPA Inc.**

Complainant,

v.

City of Santa Monica, California

Respondent.

FAA Docket No. 16-16-02



DIRECTOR'S DETERMINATION

I. INTRODUCTION

On February 5, 2016, Complainants filed a Complaint pursuant to 14 C.F.R. Part 16 against the City of Santa Monica (City), sponsor of the Santa Monica Airport (SMO), in Santa Monica, California. Complainants allege that the City is in violation of its federal obligations, including Grant Assurances 22 *Economic Nondiscrimination*, Grant Assurance 24 *Fee and Rental Structure*, and Grant Assurance 25 *Airport Revenues*.

Specifically, Complainants argue (1) airport revenue has been and continues to be diverted through insufficiently documented alleged loans from the City to the Airport and that the City charges excessive interest thereon; (2) the landing fee structure at the Airport is flawed, resulting in excessive and unjustified fees; (3) a non-aeronautical user, Santa Monica College (SMC), has paid below-market rent for non-aeronautical property; and (4) the City has refused to extend the leases of aeronautical tenants beyond month-to-month holdover terms and adopted short-term leasing policies. [FAA Exhibit 1, Item 1, Pages 45-46].

In response, the City asserts the loans made to the Airport were "valid, enforceable and adequately documented," the landing fees met "legal standards," and its "New Leasing Policy" moots Complainant's claims concerning short-term leases. However, the City "acknowledges that the FAA could find...that the City has charged SMC less than [fair market value (FMV)] for its use" of airport property, but proposes a corrective action plan on this one matter. [FAA Exhibit 1, Item 11, Pages 8-9, 23, 40, 42-43].

Based on the evidence of record in this proceeding, the Director finds that:

- The City's documentation concerning certain contributions and loans made to the Airport is inadequate to establish they are interest-bearing loans and thus the City is in non-compliance with respect to those loans;
- The City's landing fees methodology and rates do not reflect the actual use of the Airport and thus compliance with Grant Assurance 22 and Grant Assurance 24 cannot be established;
- The corrective action plan concerning charges below FMV rents to the College needs to be supplemented; and
- The City's current leasing policies are consistent with the 2017 Settlement Agreement.

II. PARTIES

A. Santa Monica Airport

The Santa Monica Airport serves the role of a general aviation public-use airport capable of accommodating a wide range of business and personal aircraft, including corporate and business jets. FAA records indicate that the planning and development of the Airport has been financed, in part, with funds provided by the FAA under the Airport Improvement Program (AIP), authorized by the *Airport and Airway Improvement Act of 1982* (AAIA), 49 U.S.C. § 47101. Between 1985 and 2003, the Airport received approximately \$9.7 million in AIP funds. Since 1948, certain airport land has also incurred obligations arising from conveyances of land (*1948 Instrument of Transfer*) executed under the powers and authority contained in the provisions of the *Surplus Property Act*, as amended, 49 U.S.C. §§ 47151-153. While the validity of those obligations has been the subject of litigation between the City, the FAA and other parties, they are not at issue here.

B. Complainants

The Complainants, which include tenants of the Airport and organizations with members who are aviation users of the Airport, are as follows:

1. Mark Smith is a pilot and owner of a Mooney 231 aircraft based in a City-leased hangar.
2. Kim Davidson Aviation, Inc. (Kim Davidson Aviation) is an aircraft service provider at the Airport.
3. Bill's Air Center, Inc. (Bill's Air Center) is an aircraft service provider at the Airport.
4. Justice Aviation, Inc. (Justice) is flight school at the Airport.
5. The National Business Aviation Association, Inc. (NBAA) represents companies that operate aircraft at the Airport.
6. The Aircraft Owners and Pilots Association, Inc. (AOPA) represents members who base their aircraft at the Airport. [FAA Exhibit 1, Item 1, Pages 3-4].

III. PROCEDURAL HISTORY

- On February 5, 2016, Complainants filed a 14 C.F.R. Part 16 Complaint. [FAA Exhibit 1, Item 1].
- On February 25, 2016, the FAA docketed the Complaint. [FAA Exhibit 1, Item 2].
- On April 11, 2016, the City filed a *Motion to Dismiss*. [FAA Exhibit 1, Item 5].
- On April 22, 2016, Complainants filed the *Complainants' Answer to Respondent's Motion to Dismiss*. [FAA Exhibit 1, Item 6].
- On May 13, 2016, Complainant Justice Aviation, Inc. withdrew as a complainant.¹ [FAA Exhibit 1, Item 7].
- On July 1, 2016, the City filed its *Answer* to the Complaint. [FAA Exhibit 1, Item 11 and 11A].
- On August 1, 2016, Complainants' filed a *Reply to Respondent's Answer*. [FAA Exhibit 1, Item 12].
- On September 13, 2016, the City filed its *Rebuttal*. [FAA Exhibit 1, Item 15].
- On September 19, 2016, Complainants filed a *Supplement and Objections*. [FAA Exhibit 1, Item 16].
- On September 29, 2016, the City filed a *Corrective Action Plan*. [FAA Exhibit 1, Item 18].
- On October 11, 2016, Complainants filed the *Complainants' Response to Santa Monica College Corrective Action Plan*, [FAA Exhibit 1, Item 19].
- On January 30, 2017, the City and the FAA entered into a *Settlement Agreement/Consent Decree*. [FAA Exhibit 1, Item 20].

¹ This motion was based on a settlement agreement between justice Aviation Inc. and Respondent City of Santa Monica, in separate and unrelated litigation. This motion did not affect the claims of any other parties in this proceeding.

IV. BACKGROUND

A. 2017 Settlement Agreement (Agreement/Decree)

On January 30, 2017, the FAA and the City of Santa Monica entered into a Settlement Agreement (Agreement), to resolve several disputes pertaining to the operation of the Airport. The Agreement was approved by the U.S. District Court for the Central District Court of California (U.S. District Court) as part of a Consent Decree. The Agreement resolved certain claims/litigation by the parties, including claims pertaining to the past operation of the Airport by the City pertaining to tenants, non-tenant aircraft and FBOs. The Agreement modified some of the City's federal obligations, including those which apply to this Complaint. The provisions in the Agreement pertinent to this dispute include the following:

1. The Airport's runway can be reduced to an operational runway length of 3,500 feet;
2. The City agrees to operate the Airport consistent with its obligations until December 31, 2028;
3. The City's operation of the Airport until December 31, 2028 shall conform with (i) the standards set forth in grant assurances 19, 22, 23, 24, 25, and 30; and (ii) all applicable operational, maintenance, and safety standards;
4. The City may exercise its proprietary exclusive right to provide aeronautical services, and that if the City does not fully provide a type of service that a private FBO desires to provide, that operator shall have reasonable access to the Airport on reasonable terms and in conformance with the standards of Grant Assurance 22;
5. Leases offered to all tenants providing aeronautical services shall be on reasonable terms and in substantially the same form as that attached as Exhibit C of the Agreement, and for purposes of the Agreement, "reasonable terms" shall mean terms that are customary and usual at similarly situated and sized general aviation airports;
6. The City shall offer all current tenants providing aeronautical services leases of no less than three (3) years with reasonable terms appropriate to the aeronautical service usually and customarily provided such service at similar facilities, including but not limited to tenant investment and financing requirements;
7. The City shall also offer leases to all prospective tenants providing aeronautical services subject to reasonable terms and consistent with Grant Assurance 22, if City does not exercise its proprietary exclusive rights; and,
8. Any lease providing aeronautical services may, at the City's discretion, be subject to termination upon six (6) months written notice of the City's exercise of its proprietary exclusive right to provide the category of services. [FAA Exhibit 1, Item 20].

In summary, the Agreement released certain grant assurances but preserved the obligations to operate the Airport in conformance with the standards of grant assurances 19, 22, 23, 24, 25 and 30. The City remains subject to its statutory obligations, including restrictions upon the use of revenue set forth in 49 U.S.C. § 47107 and 49 U.S.C. § 47133. The Agreement stipulated that the FAA was to send a letter to private parties that have filed Part 16 complaints raising issues within the scope of the Agreement requesting that the parties withdraw those complaints. Complainants in the present case declined to withdraw their Complaint but rather, requested it to be adjudicated.

V. ISSUES

Complainants raise the following specific claims and allegations in their Complaint:

- The City has diverted airport revenues by charging the Airport principal and/or interest on loans without valid documentation;
- The City has diverted airport revenues by charging interest on loans at rates exceeding those allowed;

- The City has diverted airport revenues by charging the Airport for loans made more than 6 years prior to claimed loan documentation;
- The City has imposed excessive and unreasonable landing fees on both based and transient aircraft, based on improper methodology, impermissible expenses, and unallowable or inadequately documented costs;
- The City's landing fees were adopted without reasonable notice/comment from airport users;
- The landing fees imposed by the City have resulted in the accumulation of revenue surpluses;
- The landing fees are unreasonable because it is a double-charge for services already paid;
- The City allows a non-aeronautical tenant to pay less than fair market rent for the use of airport property;
- The City has established short-term leases of less than three years without any cognizable justification;
- The City has denied new leases and imposed month-to-month lease terms without justification; and,
- The City has unreasonably delayed aeronautical lease policies. [FAA Exhibit 1, Item 1, Pages 1-3].

Upon review of the allegations summarized above, the Director has determined that the following issues require analysis to provide a complete review of the allegations made in this Complaint:

Issue 1 – Whether the City has diverted airport revenues by charging the Airport for questionable and improperly documented loans, contrary to Grant Assurance 25;

Issue 2 – Whether the City has charged below FMV rents to Santa Monica College, contrary to Grant Assurance 25;

Issue 3 – Whether the City has imposed excessive and unreasonable landing fees using artificial, unsupported numbers and improper accounting methods, contrary to Grant Assurances 22 and 24; and

Issue 4 – Whether the City's airport leasing policies are contrary to the City's federal obligations.

VI. APPLICABLE FEDERAL LAW AND POLICY

A. The Airport Improvement Program and Grant Assurances

49 U.S.C. § 47101, *et seq.*, provides for federal financial assistance for the development of public-use airports under the Airport Improvement Program (AIP). 49 U.S.C. § 47107, *et seq.*, sets forth certain assurances to which an airport sponsor must agree to as a condition of receiving federal financial assistance, and become a binding contractual obligation between the airport and the FAA.² The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances. FAA Order 5190.6B, *FAA Airport Compliance Manual* (Order) provides the relevant policies and procedures. The grant assurances and policies relevant to this Complaint are listed below.

1. Relevant Grant Assurances and Related Policies:

- Grant Assurance 22, *Economic Nondiscrimination*;
- Grant Assurance 24, *Fee and Rental Structure*;
- Grant Assurance 25, *Airport Revenues*;
- *FAA Policy and Procedures Concerning the Use of Airport Revenues, 1999 (Revenue Use Policy)*;³ and
- *DOT/FAA Policy Regarding Airport Rates and Charges, 2013 (Rates and Charges Policy)*.⁴

² See https://www.faa.gov/airports/aip/grant_assurances/media/airport-sponsor-assurances-aip.pdf.

³ https://www.faa.gov/airports/resources/publications/federal_register_notices/media/obligation_final99.pdf.

⁴ <https://www.federalregister.gov/documents/2013/09/10/2013-21905/policy-regarding-airport-rates-and-charges>.

2. 49 U.S.C. § 47107(b) (1) Use of Revenue and 49 U.S.C. § 47133 Restriction on Use of Revenues

Revenues generated by an airport that is the subject of federal assistance may not be expended for any purpose other than the capital or operating costs of (1) the airport; (2) the local airport system; or (3) any other local facility that is owned or operated by the person or entity that owns or operates the airport that is directly and substantially related to the air transportation of passengers or property.

B. The FAA Airport Compliance Program and FAA Enforcement Responsibilities

The FAA discharges its responsibilities for ensuring airport owners' compliance with their federal obligations through its Airport Compliance Program. The program is designed to ensure the availability of a national system of safe and properly maintained public-use airports operated in a manner consistent with the airport owners' federal obligations and the public's investment in civil aviation. FAA Order 5190.6B sets forth policies and procedures for the Airport Compliance Program. In addressing allegations of noncompliance, the FAA will make a determination as to whether an airport sponsor is currently in compliance with the applicable federal obligations. The *Federal Aviation Act of 1958*, as amended, 49 U.S.C. § 40101, assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. Commitments assumed by airport owners or 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. The FAA has a statutory mandate to ensure that airport owners comply with their federal grant assurances under 49 U.S.C. § 47122.

C. The Complaint and Investigative Process

Pursuant to 14 C.F.R. §16.23, a person directly and substantially affected by any alleged non-compliance may file a complaint with the FAA. The complainant shall provide a concise but complete statement of the facts relied upon to substantiate each allegation and describe how the complainant was directly and substantially affected by the things done or omitted by the respondents. If there is a reasonable basis for further investigation, the FAA will investigate. The regulations governing Part 16 proceedings provide that, if the parties' pleadings supply "a reasonable basis for further investigation," the FAA should investigate "the subject matter of the complaint." 14 C.F.R. § 16.29(a). The Complainant bears the burden of showing the airport sponsor violated a grant assurance. The airport sponsor bears the burden of proof with respect to any affirmative defense it may raise.

D. ANALYSIS

Issue 1 - Whether the City has diverted airport revenues by charging the Airport for questionable and improperly documented loans contrary to Grant Assurance 25

1. Complainants' Position on Issue 1

Complainants question the validity and amount of \$16 million of loans from the City to the Airport, a significant portion of which bears interest, claiming the "documentation and the interest computations for these loans are inconsistent with federal requirements," and thus contrary to 49 U.S.C. § 47133 and Grant Assurances 25. Complainants argue that (a) the City has diverted airport revenues by charging principal and/or interest on loans which lack valid documentation; (b) the City has diverted airport revenues by charging interest at rates exceeding those allowable under FAA policy; and (c) the City has diverted airport revenues by charging the Airport for loans made more than 6 years prior to claimed loan documentation. [FAA Exhibit 1, Item 1, Pages 2, 12-13].

2. The City's Position on Issue 1

The City asserts that "it is legally entitled...to be repaid for the millions of dollars it has loaned to the Airport." [FAA Exhibit 1, Item 15, Page 1]. The City responds that the "loans are valid, enforceable and adequately documented," and that neither 49 U.S.C. § 47133 nor Grant Assurance 25 provides any specific guidance about the use of airport revenue to repay "contributions" or "loans" that are made. The City cites *FAA Revenue Use Policy* as establishing that (a) if a transfer of funds from an airport sponsor's general fund to its airport enterprise account was documented as a loan (and not just a contribution) at the time it was made, it can be repaid whenever the airport is able to generate sufficient funds to make repayment, even if that is much longer than six years later; (b) if a loan to the airport is documented as interest-bearing at the time it is made, repayment may include interest, and (c) the interest rate charged to the airport should not exceed what the sponsor received on other investments at the time of the loan. [FAA Exhibit 1, Item 11A, Pages 8-9].

Although the City claims that the "transfers to the Airport were documented as loans at the time they were made" and that "all the loans that the City claims are interest-bearing were documented as interest-bearing loans at the time they were made," the City states that it "will implement a corrective action plan to recalculate the accumulated interest on its loans." For these reasons, the City adds, the "FAA should dismiss Complainants' claims about the outstanding loans owed to the City by the Airport." [FAA Exhibit 1, Item 11A, Page 10].

3. Discussion on Issue 1

The *FAA Revenue Use Policy* requires loans to airports to be clearly documented. Under the *Policy*, "an airport owner or operator can seek reimbursement of contributed funds only if the request is made within 6 years of the date the contribution took place. 49 U.S.C. § 47107(l). If the contribution was a loan to the airport, and clearly documented as an interest-bearing loan at the time it was made, the sponsor may repay the loan principal and interest from airport funds. Interest should not exceed a rate which the sponsor received for other investments for that period of time." *Revenue Use Policy*, 64 Fed. Reg. 7696, 7718.

A review of the record concerning the alleged loans made by the City show numerous instances of insufficient documentation. This includes agreements lacking signatures, no stated or documented interest rate, no substantive terms to validate the transaction, backdating, no loan instrument for claimed transactions, and recent documentation "superseding" earlier documentation. [FAA Exhibit 1, Item 1, Exhibit 15 a-f]. There are also changes in interest rate on entire balances without adequate justification and there is a lack of information on principal repayments. [FAA Exhibit 1, Item 1, Exhibit 16 a-d].

In addition, some agreements are also characterized as grants and are not clearly documented as interest-bearing loans as required. In other cases, "reimbursement" of contributed funds on loans is inappropriately sought on loans entered into more than 6 years earlier. [FAA Exhibit 16 a-d]. Likewise, airport budget documents are unclear in reflecting some of the loans or payment obligations. [FAA Exhibit 1, Item 1, Pages 16-17]. Although the City stated that it "will implement a corrective action plan to recalculate the accumulated interest on its loans," the information provided by the City recalculating loan balances is limited and relies on this deficient loan documentation. [FAA Exhibit 1, Item 11A, Pages 14-22, Ex. G].

In its Answer, the City claims that its independent auditor prepared annual financial reports which shows that advances were loans from the City's general fund to the airport fund. [FAA Exhibit 1, Item 11A, Pages 10-11]. The City argues that the Comprehensive Annual Financial Reports from 1989 to 2006 evidence loans because they show a "payable" item to the Airport. The City contends "formal loan agreements" are not required and that "contemporaneous documentary evidence of an

expectation of repayment” is enough documentation to show the advances were loans. [FAA Exhibit 1, Item 11A, Pages 10-11].

The City’s arguments are rejected by the Director. The Annual Reports do not show the advances were interest-bearing loans at the time they were made (from 1989 onward) nor do they show any terms of the loans. The Reports, standing alone, simply do not satisfy the “clearly supportable and documented” standard required to establish loans.

The City also points to various agreements, including six Interfund Loan/Grant Agreements and four Interfund Loan Agreements, as additional evidence showing the advances made to the airport fund from 1989-2016 were loans. [FAA Exhibit 1, Item 1, Exhibit 15 a-f and Exhibit 16 a-d respectively]. In June, 2005, City representatives executed a series of Interfund Loan/Grant Agreements.⁵ However, these agreements were backdated - executed years after the advances were made. As such, they are not evidence of the City’s intent at the time the advances were made. Additionally, the terms and title of the Interfund Loan/Grant Agreements have the characteristics of both loans and grants. The agreements include the term “Grant Agreement” in its very title. There is no expectation of repayment of a grant. None of the agreements provided for the payment of interest, but rather, provided interest was “N.A.”, or not applicable, which is indicative of a grant.

The “intended use of the funds” of each of the backdated agreements is stated as “to subsidize the operating expenses of the Airport Fund.” This is misleading as the funds were advanced to the airport decades or years before. [FAA Exhibit 1, Item 1, Exhibit 15 a-f]. In addition, the term “subsidy” is also indicative of a grant, not a loan. [FAA Exhibit 1, Item 15, Exhibit Q, Page 50]. The Director finds the backdated loans/grant agreements [Exhibit 15 a- f] pertaining to funds advanced from 1988 to 2002 do not qualify as loans or interest bearing loans under the *Revenue Use Policy* because they were not clearly documented as loans when the contributions were made. 64 Fed. Reg. at 7718.

In 2005 and 2009, the City attempted to refinance the funds identified in the Interfund Loan/Grant Agreements⁶ into several new interest bearing loans. [FAA Exhibit 1, Item 1, Exhibit 16 a-b]. Exhibit 16a is an Interfund Loan/Grant Agreement which was executed by the same City representatives during the same June 2005 period. No new funds were contributed to the airport fund. Rather, the agreement combined the \$2,000,000 non-interest bearing loan/grant made in December 1999 and the \$414,000 non-interest bearing loan/grant made in 2002 into a new \$2,414,000 interest-bearing loan with principal and interest required to be repaid over 20 years. [FAA Exhibit 1, Item 1, Exhibit 16 a-b]. The City’s attempt to combine and re-finance the previously *non-interest* bearing loan/grants into a new interest bearing loan is unconvincing and fails to satisfy the requirements of the Revenue Use Policy. They were not clearly documented as “interest bearing loans” when the contributions were actually made in 1999 and 2002. [FAA Exhibit 1, Item 1, Exhibit 15 e-f].

The airport fund was charged a total of \$743,665 of interest on the \$2,414,000 loan/grant from 2005 through 2016. All of the interest originated from the airport account and thus constitutes airport revenue which was unlawfully diverted. However, 49 U.S.C. § 47107(m)(7) precludes the recovery of illegally diverted funds more than six years after the date of diversion. The complaint was filed on February 5, 2016. Therefore, section 47107(m)(7) precludes the recovery of funds diverted prior to February 5, 2010. With respect to the \$743,665 of interest payments, \$289,073 was diverted prior to

⁵ The first Loan/Grant agreement documented a \$655,208 advance made 18 years earlier on 6/01/1988. [FAA Exhibit 1, Item 1, Exhibit 15 a]. The second Loan/Grant agreement documented a \$728,227.98 advance made 17 years earlier on 03/01/1989. [FAA Exhibit 1, Item 1, Exhibit 15 b]. The third documented a \$600,000 advance made 16 years earlier on 4/01/1990. [FAA Exhibit 1, Item 1, Exhibit 15 c]. The fourth documented a \$1,941,322.44 advance made 12 years earlier in 1994. [FAA Exhibit 1, Item 1, Exhibit 15 d]. The fifth agreement is unsigned and documented a \$2,000,000 advance made 12/01/1999. [FAA Exhibit 1, Item 1, Exhibit 15 e]. The sixth agreement is unsigned and documented a \$414,154 advance made 01/01/2002. [FAA Exhibit 1, Item 1, Exhibit 15f].

⁶ See FAA Exhibit 1, Item 1, Exhibit 15 e-f.

February 5, 2010, leaving a recoverable diversion of \$454,592 which must be credited back to the airport fund together with interest from the date the unlawful payment was made [49 U.S.C. § 47107(n)]. No further interest charges are allowable on the \$2,414,000 loan/grant.

The airport fund also made principal payments on the \$2,414,000 loan/grant from 6/2005 through 6/2008 totaling \$227,000. (FAA Exhibit 1, Item 11A, Exhibit G). Under the *Revenue Use Policy*, an airport owner or operator can seek reimbursement of contributed funds only if the request is made within six years of the date the contribution took place. 64 Fed. Reg. at 7718. The City advanced \$414,155 of new funds in 2002. (FAA Exhibit 1, Item 11A, Exhibit G). The \$227,000 in principal payments are allowable with respect to the \$414,155 funds advanced in 2002 because those payments were made within six years of the date of contribution. 49 U.S.C. § 47107(m)(7).

In June 2005, the City entered into another Interfund Loan/Grant Agreement for a \$2,839,729 loan/grant made on 11/30/2004 to subsidize capital projects. [FAA Exhibit 1, Item 1, Exhibit 15g]. The agreement provided "N.A." or no interest on the funds. [FAA Exhibit 1, Item 1, Exhibit 15g]. Five years later, on or about July 24, 2009, the City attempted to refinance this originally *non-interest* bearing loan/grant into an interest bearing loan with interest set at 8%, backdated to be effective a year earlier, July 1, 2008. [FAA Exhibit 1, Item 1, Exhibit 16b]. Again, the City's attempt to refinance the previously non-interest bearing loan/grant into an interest bearing loan fails. It was not clearly documented as "interest bearing loan" when the contribution was made in 2004. [FAA Exhibit 1, Item 1, Exhibit 15g].

The airport fund was improperly charged a total of \$515,622 in interest on the \$2,839,729 loan/grant from 2009 through 2016. [FAA Exhibit 1, Item 11A, Exhibit G]. Again, the six year limitation in section 47107(m)(7) precludes recovery of the \$132,449 funds which were diverted prior to February 5, 2010, which leaves a recoverable diversion of \$383,173 which must be credited back to the airport fund, plus interest. The airport fund has also made principal payments on the \$2,839,729 amount. The principal payments made include \$2,859,090 and \$188,873 and total \$3,047,963. [FAA Exhibit 1, Item 11A, Exhibit G]. Under the *Revenue Use Policy*, these principal payments are allowable because the original August, 2005 agreement contemplated re-payment of the funds and was reasonably contemporaneous (within 7 months) of the date of the original contribution. However, the allowable principal payments exceeds the original obligation by \$188,873 and this sum must be credited back to the airport fund, plus interest from the date the excess payments were made [49 U.S.C. § 47107(n)].

In July 2009, the City documented a \$400,000 advance made to the airport fund in April of that year. [FAA Exhibit 1, Item 1, Exhibit 16b]. The \$400,000 advance is reasonably contemporaneous and sufficiently documented under the *Revenue Use Policy* and thus the City is entitled to interest and repayment of the \$400,000. In October 2012 and March 2013, the City entered into new agreements that re-financed all of the prior loan/grants to the airport fund and documented an additional advance of \$3,309,648 to the airport fund. [FAA Exhibit 1, Item 1, Exhibit 16 c-d]. The agreements set forth the interest rates and repayment terms of the pre-2005 loans/grants, which is improper as explained above. The actual date and purpose of the new \$3,309,648 advance is not stated, except that it was after July 1, 2011. [FAA Exhibit 1, Item 1, Exhibit 16c]. The Director finds that the 2012 and 2013 agreements are valid as to the \$3,309,648 advance only, with the exception of the 7.5% and 5.4% interest rates, which cannot exceed the rate which the City received for other investments. Repayment based on the corrected interest rates is thus required.

4. Conclusion Issue 1

For the reasons shown above, the Director finds, based upon the record, that the alleged loans to the Airport are insufficiently and improperly documented as such and fail to satisfy the requirements of loans under the *Revenue Use Policy*. Therefore, against this background, the Director concludes the City is in non-compliance with 49 U.S.C. § 47133, 49 U.S.C. § 47107(l), Grant Assurance 25 *Airport*

Revenues and related FAA policies, pending implementation and completion of appropriate corrective action. Specifically, the Director finds:

- a. The funds advanced from the City to the airport fund prior to 2005 constitute contributions to the Airport, not loans or interest bearing loans. However, the recovery of any improper interest and principal payments made prior to February 5, 2010 is now time-barred under the six year limitation set forth in 49 U.S.C. § 47107(m)(7) and under the *Revenue Use Policy*.
- b. Improper interest payments charged to the airport fund made after February 5, 2010 totaling \$454,292 and \$383,173 and the principal overpayment of \$188,873 must be credited back to the airport fund, plus interest from the date of the improper withdrawals or payments.
- c. The City is entitled to interest and repayment of the July 2009 \$400,000 advance and the October 2012 \$3,309,648 advance.
- d. The City must provide, within 60 days, documentation regarding the interest rate charged showing it does not exceed the rate for its other investments when the loans were issued. The City has been fully repaid the November 2004 advance of \$2,839,729.

Issue 2 – Whether the City has charged below FMV rents to Santa Monica College (SMC), contrary to Grant Assurance 25

1. Complainants' Position on Issue 2

Complainants allege that there is “substantial evidence that the City has for years charged, and continues to charge, less than fair market rent to for Airport property.” Complainants assert the arrangement between the City and the College for use of airport property violates Grant Assurance 25 and constitutes revenue diversion. [FAA Exhibit 1, Item 1, Pages 36-37].

2. The City's Position on Issue 2

Without admitting that the rent it charged to the College was inconsistent with the City's federal obligations, the City acknowledges “that the FAA could find, for the period July 1, 2010 through June 30, 2016, that the City has charged SMC less than fair market value for its lease for SMC. The City admits that the College's lease rate in 2013 was \$21,411/month, but states that it “lacks sufficient information to admit or deny” the methodology and findings presented by Complainants. [FAA Exhibit 1, Item 11, Pages 41]. The City submitted a corrective action plan concerning rent payments from [SMC] and found that the under payments, with interest through 2016, were \$1.1 million. The City committed to reduce the outstanding loan balance of the Airport by that amount. [FAA Exhibit 1, Item 18].

3. Discussion on Issue 2

The City proposes a corrective action plan to resolve the claim that the City violated its federal obligation for the College lease. [FAA Exhibit 1, Item 11A, Page 40]. The City proposed to recalculate the rent in accordance with the property's appraised FMV and repay any shortfall to the Airport going back to February 2010. Specifically, the City's proposed corrective action plan states (1) the City will submit to the FAA an appraisal of the FMV of the Airport's property that is the subject of the College lease for FY 2011-2016; (2) the City will pay the Airport the shortage between the rents paid to and the FMV of the property, plus interest; (3) for FY 2017, the City will pay the Airport the shortage between the rents paid to the Airport by the College for 2017 and the FMV of the property; and (4) the City will provide the FAA with a written certificate of compliance with this corrective action plan.” [FAA Exhibit 1, Item 15, Page 16].

As part of the corrective action plan, the City provided an appraisal report estimating the fair market rental value of the College property and calculated the variances, valued at \$1,069,327.91. The City calculated adjusted for accumulated interest bringing the total to \$1,103,146.19. Finally, the City

affirms that the City's General Fund would, effective as of September 30, 2016, "reduce the outstanding loan balance of the Airport Fund" by that amount [FAA Exhibit 1, Item 18].

Complainants assert that the City's proposal "appears to resolve the allegations [in the Complaint] for the timeframe within the applicable statute of limitations through June 30, 2016," but there is no "discussion of how the City will ensure current and future compliance." Complainants state that although "the City represented that...[it will] reimburse the Airport for any differential between the rent paid by SMC in FY 2017 (July 1, 2016 - June 30, 2017)," the proposed corrective action plan "does not actually include such a commitment," nor does the plan "evaluate the FMV of the property at issue for FY2017." Complainants add that "it is unclear how the amount of any differential for FY2017 would be determined," and if "the City intends to...enter into a new FMV-based lease with SMC." [FAA Exhibit 1, Item 19].

Upon review of the allegation made by Complainants, the Director concurs that the leasing agreement between the City and the College was not consistent with the City's federal obligations, but that the City took proactive steps to correct the situation by submitting the corrective action plan, which, upon review, is generally consistent with correcting the situation. However, within 60 days, the City still must provide details, acceptable to the FAA, on (1) how it will ensure future compliance, (2) how reimbursements to the Airport for any differential between the rent paid by the College in FY2017 and beyond will occur, and (3) the City's actions concerning future leases with the College. The Director also requests the City provide information showing (1) whether any similar occurrences have taken place with other non-aeronautical users at the Airport and (2) how to prevent any future occurrences of this type.

4. Conclusion on Issue 2

Based on the above, the Director finds that the City charged below FMV rents to the College, contrary to its applicable federal obligations. Although the City took action to correct the situation, the corrective action plan needs to be supplemented as noted above.

Issue 3 – Whether the City has imposed excessive and unreasonable landing fees using artificial, unsupported numbers and improper accounting methods contrary to Grant Assurance 22 and Grant Assurance 24

1. Complainants' Position on Issue 3

Complainants allege that in April 2013, "with virtually no opportunity for public review or input, and with constantly changing supporting materials, the City adopted a resolution nearly tripling Airport landing fees and imposing them for the first time on both based and transient aircraft."

Complainants add that "the justification for the imposition of these landing fees stems primarily from artificial Airport deficits created by the revenue diversion alleged supra, as well as by...additional financial manipulation." Complainants assert that "the landing fees are...facially unreasonable" and "contrary to Grant Assurance 22." [FAA Exhibit 1, Item 1, Page 21].

2. The City's Position on Issue 3

The City states that it has the right to establish by ordinance a compensatory landing fee that recovers from the operators of aircraft using the Airport and for the capital and operating costs of building, improving, maintaining and operating the Airport. The City adds that the 2013 landing fees "meets applicable legal standards," and that they were calculated in accordance with well-accepted principles of compensatory rate-setting. The City explains that the landing fees were "calculated to recover all of the City's capital and operating costs allocable to the airfield cost center after crediting the airfield rate base with certain airfield revenue," and that the "net airfield costs were then divided by total landed weight, yielding a landing fee rate (per thousand pound unit) to be paid by each

aircraft operator using the airfield.” [FAA Exhibit 1, Item 11, Page 23]. As variables, the City refers, among others to its Cost Allocation Plan, cross-crediting, airfield cost center elements (other aviation revenues), amortization charges, area square footage, project useful life, and landing weights. [FAA Exhibit 1, Item 11A, Pages 22-30].

3. Discussion on Issue 3

The City’s explanation for its landing fee structure and rate-setting methodology is now obsolete. Following the 2017 Settlement Agreement, significant changes have occurred at the Airport, including changes to the airport’s infrastructure, use, planning and funding requirements. This has had a significant effect on how the airport is used, in terms of number of and types of aircraft. Relevant factors include the reduction of the runway length from 5,000 feet to 3,500 feet, expanding non-aviation uses and related revenues (and how these are applied), changes in the airport’s fleet mix, distinctions between based v. transient users, changes in budgets and forecasts, and a 80% reduction in jet operations. These direct and indirect changes impact many of the variables presented by the City as justification in its methodology (2013 *Financial Projections - Proposed Landing Fee Calculation*). Consequently, the City’s original justifications for an increase in landing fee from \$2.07 to \$5.48 per 1,000 lbs. landing weight (an increase in 264%) or, as the City documents, a 500%+ increase in landing fees revenues from 2012 into 2013 and beyond, are based upon obsolete baselines and calculations.

In 2013, the City represented the landing fees as “cost recovery for the maintenance and operation of the public-use aviation areas,” or costs “to maintain and operate the public-use aviation areas - runway, taxiways, taxi lanes & ramps,” or, in part, to pave “runway, taxiway and parking lot improvements.” [FAA Exhibit 1, Items 30, 32 and 33]. That defines the allowable costs. The allowable costs cited by the City in 2013 as justification (cost recovery) have appreciably changed, and it is not possible, based on the information submitted by the City, to make the finding that the landing fees at the Airport (1) reasonably and fairly allocate costs to users on a rational and economically justified basis, and (2) do not exceed the allowable costs of the airfield, as required by FAA policy.

It is unclear how (1) some non-airfield costs (i.e., certain amortization charges, non-aviation improvements) appear to have been improperly bundled as part of the cost recovery justification for the landing fees, (2) how some non-landing fee revenues are accounted for, (3) how substantial amounts of interest costs on debt were incorrectly charged and (4) how other charges have been allocated, raise additional issues that now require further consideration in setting landing fees.

4. Conclusion Issue 3

Because the City’s justification for its landing fee methodology and rates does not reflect current and actual costs and use of the Airport, and some of the methodology is unclear, compliance with Grant Assurances 22 and 24 cannot be established. Therefore, within 60 days, the City must update its methodology and fees to reflect current and actual costs in the use of the Airport and in accordance with FAA guidance.⁷

Issue 4 – Whether the City’s airport leasing policies are contrary to the City’s federal obligations

1. Complainants’ Position on Issue 4

Complainants argue that lease renewals and new leases have been delayed unreasonably and without justification and that “the City’s proposed short-term leases are unjustified and plainly

⁷ Also see Bombardier Aerospace Corp., Dassault Falcon Jet Corp. v. City of Santa Monica, FAA Docket No. 16-03-11 provides guidance on various elements of pavement cost recovery requirements.

illegal.” Complainants argue that the City has established “short-term leases of less than three years’ duration for commercial aeronautical tenants, without any cognizable justification” and that the City has denied new leases and imposed month-to-month lease terms on aeronautical airport tenants, also without any cognizable justification. [FAA Exhibit 1, Item 1, Pages 3, 37].

2. The City’s Position on Issue 4

In response, the City states that “given the unique circumstances”, the City has struck an appropriate middle-ground by permitting aeronautical tenants to remain on the Airport, but exercising its discretion not to enter into leases that could extend beyond the date that the City is obligated to operate the Airport as an airport.” [FAA Exhibit 1, Item 15, Page 17]. The City adds that its New Leasing Policy, dated March 22, 2016 moots the claims by Complainants. [FAA Exhibit 1, Item 11, Pages 47-48]. In 2018, the City updated this leasing policy. [FAA Exhibit 1, Item 22].

3. Discussion on Issue 4

Complainants’ arguments, including the multiple references to the applicable federal requirements and policies are sound, but only within the context of the conditions which existed before the 2017 Settlement Agreement. For example, short term leases are generally not reasonable in most cases where lessees have made investments in the facilities. The fact is that the relevant terms and conditions contained in the 2017 Settlement Agreement effectively moots Complainants’ allegations on this issue. The 2017 Settlement Agreement specifically states that “leases offered to all tenants providing aeronautical services shall be on reasonable terms and in substantially the same form” and that the “the City shall offer all current tenants providing aeronautical services leases of no less than three (3) years with reasonable terms appropriate to the aeronautical service” and taking into account tenant investment and financing requirements.” [FAA Exhibit 1, Item 20, Page 6].

4. Conclusion Issue 4

Against this background, the Director finds that while the City’s leasing policies are generally consistent with the 2017 Settlement Agreement, any leases to aeronautical service providers must be “no less than (3) years” in duration.

E. CONCLUSION AND FINDINGS

Based on the evidence of record in this proceeding, the Director finds that:

- Issue - 1** The City is in non-compliance with 49 U.S.C. § 47133, 49 U.S.C. § 47107(l), Grant Assurance 25 and related FAA policies concerning certain advances and loans/grants made to the airport fund because they were not clearly documented as loans or interest-bearing loans when they were made, as required by the *Revenue Use Policy*.
- Issue - 2** Although the City charged below FMV rents to the College and submitted a corrective action plan, the plan needs to be supplemented, and the City needs to provide information showing (1) whether any similar occurrences have taken place with other non-aeronautical users at the Airport, and (2) how to prevent any future occurrences of this type;
- Issue - 3** The City’s landing fee methodology and fees do not reflect the actual use of the airport (after the settlement was executed) and lack justification, and thus compliance with Grant Assurance 22 and Grant Assurance 24 cannot be established.
- Issue - 4** The City’s current leasing policies are generally consistent with the 2017 Settlement Agreement, but any leases must be no less than (3) years in duration.

All other motions not specifically granted herein are denied.

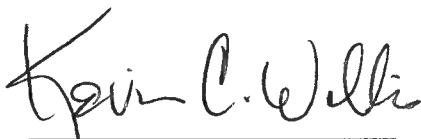
INTERIM ORDER

The Director, in accordance with 14 C.F.R. § 16.109(c), directs the City to submit within 30 days a comprehensive corrective action plan to:

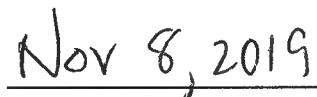
- a) Subject to FAA review and approval, and using acceptable financial and accounting practices, submit accurate loan and payment schedule which shows only the allowable loans from the general fund to the airport fund, as provided herein, and adjusts the outstanding allowable loan balances to reflect the payment, in full, of the November, 2004 advance of \$2,839,729; credit the improper interest payments charged to the airport fund totaling \$743,665 and \$515,672 and the principal overpayment of \$188,873, plus interest from the date of each improper payment; and provides documentation regarding the interest rate to be charged on the allowable loans does not exceed the rate for other City investments.
- b) Supplement the corrective action plan to (1) ensure future compliance, including any differential rents in FY 2017 and beyond, and (2) provide details on the current and future leases for the College property;
- c) Provide an updated landing fee methodology, acceptable to the FAA, which reflects the significant physical and operational changes that have occurred at the Airport since the 2017 Settlement Agreement and correct the stated deficiencies;
- d) Provide evidence that the leases being offered to aeronautical service providers at the airport are no less than 3 years in duration.
- e) Pending the FAA's approval of the corrective action plan, any approval of any applications submitted by the City for amounts apportioned under 49 U.S.C. § 47114(d) and authorized under 49 U.S.C. § 47115 will be withheld in accordance with 49 U.S.C. § 47106(d); and
- f) Consideration will also be given to seek and apply the sanctions for noncompliance as provided in Section IX, (E), (e-g) of *FAA Policy and Procedures Concerning the Use of Airport Revenues*, 1999 (*Revenue Use Policy*).

RIGHT TO APPEAL

This Director's Determination is an initial agency determination and does not constitute a final agency decision and order subject to judicial review. 14 C.F.R. § 16.247(b)(2). A party to this proceeding adversely affected by the Director's Determination may appeal the initial determination pursuant to 14 C.F.R. § 16.33(c) within 30 days after service of the Director's Determination.



Kevin C. Willis
Director, Airport Compliance
and Management Analysis
Federal Aviation Administration



Date