

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

Corporate Jets, Inc.)	
)	
Complainant)	
v.)	
)	Docket No. 16 - 01- 12
City of Scottsdale)	
)	
Respondent)	

DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) based on the above-referenced complaint filed under *FAA Rules of Practice for Federally-Assisted Airport Proceedings*, 14 Code of Federal Regulations (CFR) Part 16 (FAA Rules of Practice).

Corporate Jets, Inc. (Corporate Jets/Complainant), through its counsel, Watkins & Roe, P.C., has filed a complaint against the City of Scottsdale, Arizona (City/Respondent), which operates the Scottsdale Municipal Airport (Airport). The Complaint alleges that the City, in operating the Scottsdale Municipal Airport, has engaged in activity contrary to its Federal obligations.¹ The Complainant is a full service commercial service provider known as a fixed-base operator (FBO).²

The Complainant alleges that the City violated either 49 U.S.C. § 40103(e) or 49 U.S.C. 47103(a)(4) and its related Federal grant assurances, that prohibits unjust economic discrimination and the granting of exclusive rights.

Upon review of the facts, we understand that Corporate Jets objects to the efforts of the City of Scottsdale to increase competition at the Airport by soliciting bid proposals for an additional fixed-base operator (FBO) at the Airport. Corporate Jets also alleges that it has been unfairly denied the opportunity to participate in the bid process by an exclusion attached to the bid package entitled "Sixth Addendum to Invitation For Proposals for Scottsdale Airport Fixed Base Operator (Sixth Addendum)."³

¹ FAA Exhibit 1, Item 1.

² A fixed-based operator (FBO) is a commercial entity, providing aeronautical services, such as maintenance, storage, ground and flight instruction, fueling, etc., to the public see e.g., FAA Order 5190.6A, Appendix 5.

³ FAA Exhibit 1, Item 1, exhibit 2.

Specifically, Corporate Jets argues that provisions of its 1984 lease, entered into with the City, precludes fueling operations by a new FBO on parcels made available in the City's request for proposals.

In its Answer, the City argues that irrespective of the original intent of the lease when it was executed seventeen years ago, the covenant in the Lease preventing fueling competition is restrictive, and therefore unenforceable on its face as a grant of an exclusive right to Corporate Jets.⁴

The decision in this manner is based on applicable law and FAA policy, and review of the arguments and supporting documentation submitted by the parties.

With respect to the allegations presented in this Complaint, under the specific circumstances at the Scottsdale Municipal Airport, we find that the City of Scottsdale is not in violation of its Federal obligations.

Our decision in this matter is based on the applicable Federal law and FAA policy, review of the pleadings and supporting documentation submitted by the parties, which comprise the administrative record reflected in the attached FAA Exhibit 1.⁵

II. THE AIRPORT

The Scottsdale Municipal Airport is a public-use airport located in Scottsdale, Arizona. The Airport is owned and operated by the City of Scottsdale.⁶ The facility is a commercial service airport, classified as a non-primary airport.⁷ The Airport is the base of operations for 429 aircraft and accounts for approximately 230,586 operations each year.⁸

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, as amended, 49 USC § 47101, *et seq.* Since 1982, the Airport has received a total of \$11,983,218 in Federal airport development assistance.⁹

III. BACKGROUND

In 1984, the City of Scottsdale entered into a lease with Falcon Development Corporation to whom Corporate Jets is a successor in interest, to operate a fixed base operation at the Scottsdale Municipal Airport. This lease contained a Restrictive Covenant that stated, ... "the right to sell or otherwise market aircraft fuel on Airport lands on the north side of the Airport shall be limited to existing fixed base operator lessees, at execution of this Lease, and the Lessee of the Demised Premises...."¹⁰ Section VII of the 1984 lease provides: "Nothing herein contained shall be

⁴ FAA Exhibit 1, Item 3, page 3.

⁵ FAA Exhibit 1 provides the Index of the Administrative Record in this proceeding.

⁶ FAA Form 5010 "Airport Master Record" for GFK. Date: 11/27/2001 (FAA Exhibit 1, Item 6).

⁷ National Plan of Integrated Airport Systems (NPIAS), 1998-2002.

⁸ FAA Form 5010 "Airport Master Record" for GFK. Date: 11/27/2001 (FAA Exhibit 1, Item 6).

⁹ Airport Sponsor AIP Grant History dated 09/11/01 (FAA Exhibit 1, Item 7).

¹⁰ FAA Exhibit 1, Item 1, page 1-2.

construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act as amended from time to time.”¹¹

In addition to the 1984 Lease, Corporate Jets is the lessee of two other leaseholds on the northwest side of the Airport’s main runway.

In 2000, the City began actively soliciting proposals for an additional fixed base operator at the Airport. On May 18, 2001, the City issued a Sixth Addendum to Invitation For Proposals For Scottsdale Airport Fixed Base Operator (Sixth Addendum).

The Sixth Addendum effectively precludes Corporate Jets from being awarded the new lease. It provides, in relevant part, “If the successful bidder is engaged in any business operation at the Scottsdale Airport which includes transient fueling, the bidder must, prior to entering into completely divest itself of any connection to such business operation to a competent, qualified and unrelated third party.” [sic]¹²

The Sixth Addendum also provides that two parcels are available for lease: (1) the Main Parcel (the Reywest Parcel) and (2) the Optional Parcel (the Cholla Parcel). The Reywest Parcel is located on the northern half of the Airport property on the south side of the runway. The Cholla Parcel is located on the northern half of the Airport property on the north side of the runway.

Corporate Jets states that the 1984 Lease does not expressly provide whether the “north side” of the Airport refers to Airport land to the north of a horizontal plane running through the center of the Airport, or whether it refers to Airport land on the north side of the runway. If the former meaning is correct, both the Reywest Parcel and the Cholla Parcel are subject to the Restrictive Covenant. If the latter is correct, only the Cholla Parcel is subject to the Restrictive Covenant.¹³

Following the issuance of the Sixth Addendum, Corporate Jets notified the City that it believed an award of a lease permitting the sale and/or marketing of aircraft fuel on the Cholla Parcel and/or the Reywest Parcel would violate the Restrictive Covenant.

On June 18, 2001, Scott Gray, Aviation Director at the Airport, contacted FAA and requested its position with respect to the enforceability of the Restrictive Covenant.¹⁴

On July 3, 2001, Tony Garcia, Airport Compliance Specialist for the Western Pacific Region of the FAA, responded to the City and concluded “If the parties to the lease agreement abide by the stated provision in the lease to prohibit another fueler on the Airport, it will represent the granting of an exclusive right to [Corporate Jets].”¹⁵

The City provided Corporate Jets with copies of the June 18, 2001, and July 3, 2001 letters. Counsel for Corporate Jets contended that the conclusion set forth in Mr. Garcia’s letter did not apply to the facts of the case.

¹¹ FAA Exhibit 1, Item 3, page 3.

¹² FAA Exhibit 1, Item 1, page 2.

¹³ FAA Exhibit 1, Item 1, page 3.

¹⁴ FAA Exhibit 1, Item 1, exhibit 5.

¹⁵ FAA Exhibit 1, Item 1, exhibit 6.

By letter on July 23, 2001, counsel for Corporate Jets proposed that the City "agree that the Restrictive Covenant applies only to the Cholla Parcel and that the successful bidder's use of the Cholla Parcel not include the sale or marketing of aircraft fuel."¹⁶

On July 25, 2001, the City informed Corporate Jets that it was not interested in pursuing further discussions regarding the terms of the Restrictive Covenant.

On June 29, 2001, the City issued a Ninth Addendum to Invitation For Proposals for Scottsdale Airport Fixed Base Operator (the Ninth Addendum). The Ninth Addendum imposed a July 31, 2001, deadline for the submission of proposals.¹⁷

IV. ISSUES

Upon review of the allegations made by the Complainant, and the relevant airport-specific circumstances, summarized above in the Background Section, the FAA has determined the following issue requires analysis in order to provide a complete review of the Authority's compliance with applicable Federal law and policy:

Whether the City by imposing the condition set forth in the Sixth Amendment, which effectively prevents Corporate Jets from bidding, grants an exclusive right in violation of 49 U.S.C. 40103(e) and constitutes a violation of Grant Assurance 22, Economic Nondiscrimination, implementing the provisions of 49 U.S.C. § 47107(a)(1) through (6).

We note that the Complainant also requested that the FAA determine whether the application of the Restrictive Covenant to exclude the sales and marketing of aircraft fuel on the Cholla Parcel and the Reywest Parcel would result in the granting of an exclusive right in violation of 49 U.S.C. §§ 40103(e) 47107(a)(4). The Complainant also requested that the FAA determine whether the application of the Restrictive Covenant to exclude the sale and marketing of aircraft fuel on the Cholla Parcel, but not on the Reywest Parcel, would result in the granting of an exclusive right in violation of 49 U.S.C. §§ 40103(e) 47107(a)(4). However, Part 16 is not the appropriate forum in which to address the Complainant's hypothetical scenarios, and we have not included this request as an issue for consideration.

The Part 16 process is a formal investigative process to establish specific facts to determine whether a sponsor is actually violating a term in an agreement with the Federal government regarding the operation of an airport in the public's interest, as defined by Federal law, regulation, policy, grant assurances and deed restrictions in documents of conveyance. In this case, the record clearly establishes that the airport sponsor does not intend to enforce the Restrictive Covenant in the Complainant's lease. Consequently, the FAA cannot find, as a matter of fact, that the Respondent's "application" of the Restrictive Covenant would be a violation of Federal law, regulation, policy or the grant assurances.

That said, we recognize that the Respondent may have relied on the FAA Western Pacific region (AWP) Airports Division letter of July 3, 2001, in deciding whether or not to permit aircraft fuel

¹⁶ FAA Exhibit 1, Item 1, exhibit 7.

¹⁷ FAA Exhibit 1, Item 1, exhibit 8.

sales from either the Cholla or Reywest parcels by an entity other than Corporate Jets; and that there is now a disagreement on whether that informal opinion applies to the circumstances in this case. Therefore, we have reviewed the FAA AWP Airports Division letter and provide the following clarification in order to assist the parties in their resolution of this matter.

The AWP letter concludes that “[I]f the parties to the lease agreement abide by the stated provision in the lease to prohibit another fueler on the Airport, it will represent the granting of an exclusive right to [Corporate Jets].”¹⁸ We believe the AWP informal opinion is applicable whether the Restrictive Covenant is interpreted as applying to both the Cholla and the Reywest parcels, or only to the Cholla parcel.

In both speculative scenarios presented by the Complainant, the Restrictive Covenant would effectively deny another person or entity the same right or privilege given to Corporate Jets - to sell fuel from a location on the “north side” of the airport - even though land is available that would allow the Respondent to grant the same rights to another person or entity, but for the Restrictive Covenant. While the FAA has not proceeded to a determination on this issue because the sponsor does not intend to enforce the Restrictive Covenant, the agency would generally find that language that limits the use of any part of an airport for the sole purpose of restricting competition would be a *prima facie* violation of the prohibition on the grant of an exclusive right.

The Complainant’s contention that there can be no exclusive right granted because there is more than one person or entity that sells aircraft fuel to the public at the Airport is not correct. Even assuming that there are two “independent” FBOs that sell fuel at the Airport, it is a long-standing FAA policy that an exclusive right can be conferred on one or more parties. Specifically, both FAA Order 5190.1A and 5190.6A provide that “a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right.”¹⁹

V. APPLICABLE FEDERAL LAW AND FAA POLICY

The Federal role in civil aviation has been augmented by various legislative actions that authorize programs for providing Federal funds and other assistance to local communities for the development of airport facilities. In each such 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 and 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 fair and reasonable access to the airport.

¹⁸ FAA Exhibit 1, Item 1, exhibit 6.

¹⁹ See FAA Order 5190.1A, p.1, and FAA Order 5190.6A, Appendix 5.

The Airport Improvement Program and the Airport Sponsor Assurances

Title 49 U.S.C. § 47101, *et seq.*, provides for Federal airport financial assistance for the development of public-use airports under the Airport Improvement Program (AIP) established by the Airport and Airway Improvement Act of 1982, as amended. 49 U.S.C. § 47107, *et seq.*, sets forth assurances to which an airport sponsor agrees as a condition of receiving Federal financial assistance. Upon acceptance of an AIP grant, the assurances become a binding contractual obligation between the airport sponsor and the Federal government.

The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances.²⁰

FAA Order 5190.6A, *Airport Compliance Requirements* (Order), issued on October 2, 1989, provides the policies and procedures to be followed by the FAA in carrying out its legislatively mandated functions related to federally obligated airport owners' compliance with their sponsor assurances. 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.

The FAA Airport Compliance Program

The FAA discharges its responsibilities for ensuring airport owners' compliance with their Federal obligations through its Airport Compliance Program. The FAA's airport compliance efforts are based on the contractual obligations, which an airport owner accepts when receiving Federal grant funds or the transfer of Federal property for airport purposes. These obligations are incorporated in grant agreements and instruments of conveyance in order to protect the public's interest in civil aviation and to ensure compliance with Federal laws.

The FAA Airport Compliance 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. The Airport Compliance Program does not control or direct the operation of airports; rather it monitors the administration of the valuable rights pledged by airport sponsors to the people of the United States in exchange for monetary grants and donations of Federal property to ensure that the public interest is being served.

FAA Order 5190.6A sets forth 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 to be followed by FAA personnel in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments made to the United States by airport owners as a condition for the grant of Federal funds or the conveyance of Federal property for airport purposes. The Order analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the nature of those assurances, addresses the application of these assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

²⁰ See, e.g., the Federal Aviation Act of 1958, as amended and recodified, 49 U.S.C. § 40101, 40113, 40114, 46101, 46104, 46105, 46106, 46110, and the Airport and Airway Improvement Act of 1982, as amended and recodified, 49 U.S.C. § 47105(d), 47106(d), 47107(k), 47107(l), 47111(d), 47122.

As a general rule, we note that the FAA Compliance Program is designed to achieve voluntary compliance with Federal obligations. In addressing allegations of non-compliance, the FAA will make a determination as to whether an airport sponsor is currently in compliance with the applicable Federal obligations.

FAA has to make a judgment of whether the sponsor is reasonably meeting its Federal obligations.²¹ FAA can also take into consideration any action or program the sponsor has taken or implemented or proposed action or program the sponsor intends to take, which in FAA's judgment, is adequate to reasonably carry out the obligations under the grant assurances.²²

Thus, FAA can take into consideration reasonable corrective actions by the sponsor as measures to resolve alleged or potential violations of applicable Federal obligations, and as measures that could prevent reoccurrence of non-compliance and ensure sponsor compliance in the future.

Enforcement of Airport Sponsor Assurances

FAA Order 5190.6A covers all aspects of the Airport Compliance Program except enforcement procedures. Enforcement procedures regarding airport compliance matters, absent the filing of a complaint under *FAA Rules of Practice for Federally-Assisted Airport Proceedings* (14 CFR Part 16), continue to be set forth in the predecessor order, FAA Order 5190.6 issued August 24, 1973, and incorporated by reference in FAA Order 5190.6A.²³ *FAA Rules of Practice for Federally-Assisted Airport Proceedings* (14 CFR Part 16) were published in the Federal Register (61 FR 53998, October 16, 1996) and were effective on December 16, 1996.

Airport Owner Rights and Responsibilities

Assurance 5, "Preserving Rights and Powers," of the prescribed sponsor assurances implements the provisions of the AAIA, 49 USC Section 47107(a), et seq., and requires, in pertinent part, that the sponsor of a federally obligated airport "...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."

FAA Order 5190.6A, *Airport Compliance Requirements*, (Order) describes the responsibilities under Assurance 5 assumed by the owners of public-use airports developed with Federal assistance. Among these is the responsibility for enforcing adequate rules, regulations, or ordinances as are necessary to ensure the safe and efficient operation of the airport. See Order, Secs. 4-7 and 4-8.

Public Use of the Airport

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

²¹ See FAA Order 5190.6A, Sec. 5-6.

²² See FAA Order 5190.6A, Sec. 5-6.

²³ See FAA Order 5190.6A, Sec. 5-3, and FAA Order 5190.6A, Sec. 6-2.

aeronautical activity on fair and reasonable terms, and without unjust discrimination. Assurance 22, Economic Nondiscrimination, of the prescribed sponsor assurances implements the provisions of 49 U.S.C. § 47107(a)(1) through (6), and requires, in pertinent part, that the sponsor of a federally obligated airport

"...will make its 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(a)

"...will ensure that each fixed-based operator at any airport owned by the sponsor shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities." Assurance 22(c)

"...may establish such fair, equal, 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(h)

FAA Order 5190.6A describes the responsibilities under Assurance 22 assumed by the owners of public use airports developed with Federal assistance.

Exclusive Rights

Title 49 U.S.C. § 40103(e) provides, in relevant part, "...there shall be no exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended." 49 U.S.C. § 47107(a)(4) similarly provides, in pertinent part, "...there will be no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public."

Assurance 23, "Exclusive Rights", of the prescribed sponsor assurances requires, in pertinent part, that the sponsor of a federally obligated airport "...will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public...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 the Airport and Airway Improvement Act of 1982."

In FAA Order 5190.1A, Exclusive Rights,²⁴ the FAA published its exclusive rights policy and broadly identified 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, FAA has taken the position that the application of any unreasonable requirement or standard that is applied in an unjustly discriminatory manner may constitute a constructive grant of an exclusive right.

An exclusive right is defined as a power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred either by express agreement, by the imposition of unreasonable standards or requirements, or by any

²⁴ Dated 10/10/85.

other means. Such a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right.²⁵ Therefore, it is FAA's policy that the sponsor of a federally obligated airport will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public...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.

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 F.2d 1529 (11th Cir, 1985). FAA Order 5190.6A provides additional guidance on the application of the statutory prohibition against exclusive rights and FAA policy regarding exclusive rights at public-use airports.²⁶

VI. ANALYSIS AND DISCUSSION

Whether the City by imposing the condition set forth in the Sixth Amendment, which effectively prevents Corporate Jets from bidding, grants an exclusive right in violation of 49 U.S.C. 40103(e) and constitutes a violation of Grant Assurance 22, Economic Nondiscrimination, implementing the provisions of 49 U.S.C. § 47107(a)(1) through (6).

The Complainant argues that the Sixth Addendum effectively precludes Corporate Jets from being awarded the new lease. The Sixth Addendum to Invitation for Proposals for Scottsdale Airport Fixed Base Operator, states in part that "the purpose of the Invitation for Proposals is to promote fair competition at the Scottsdale Airport" and "if the successful bidder is engaged in any business operation at the Scottsdale Airport which includes transient fueling, the bidder must, prior to entering into completely [sic] divest itself of any connection to such business operation to a competent, qualified and unrelated third party."²⁷

A violation of Grant Assurance 22 would occur when an airport sponsor unreasonably excludes a qualified applicant from engaging in an on-airport aeronautical activity, such as fuel sales, on unreasonable terms, and with unjust discrimination. However, the Director finds that the "cause" cited by the Respondent, iterated in the Sixth Addendum, precluding Corporate Jets from bidding, to be within the rights and responsibilities of the airport sponsor and reasonable and justified since it promotes competition at the airport. It appears to be in the best interest of the public in civil aviation and consistent with the prohibition against exclusive rights under Grant Assurance 23.

As a matter of policy, FAA accepts that, in the event an incumbent service provider can demonstrate that more space or land is needed at the airport, the incumbent should be required to compete along with all other qualified bidders for the available land and not simply be provided with such land without competition. However, FAA also recognizes an airport sponsor's ability to use an available parcel of land to open the airport to competition and prevent complete saturation of the airport by a single enterprise,²⁸ rather than for the expansion of the incumbent FBO. Practically, therefore, even though Corporate Jets is one of two entities the City recognizes as fixed-base

²⁵ See FAA Order 5190-1A, p. 1.

²⁶ See FAA Order 5190.6A, Chapter 3.

²⁷ FAA Exhibit 1, Item 1, exhibit 2.

²⁸ See AC 150-5190-5, Exclusive Right and Minimum Standards for Commercial Aeronautical Activities, p.2, 4/7/00.

operators at the Airport,²⁹ a sponsor can exclude an incumbent FBO from responding to a request for proposal, based on the sponsor's desire to create competition or add further competition at the airport and to provide more choice and services for the public users.³⁰ These actions, in and of themselves, are not unreasonable, or unjustly discriminatory and do not violate the exclusive right prohibition in so far as they are justified, uniformly applied and meant to promote competition, public airport use and the interest of civil aviation overall.

This is especially true in light of the fact that Corporate Jets states that in addition to the 1984 Lease in question, it already has two other leaseholds on the northwest side of the airport that have traditionally been used to market aviation fuel at the Airport.³¹ In fact, in its Rebuttal, the City adds, and the record supports, that Scottsdale FBO, Inc, a corporate affiliate of Corporate Jets, controls the leasehold interest of the Airport's second FBO, Executive Aircraft Management, LLC (EAM), and that Scottsdale FBO limits EAM's ability to sell fuel except through a self fueling island, requires EAM to purchase its fuel from Corporate Jets, and prohibits EAM from using fuel trucks to fuel transient aircraft.³² The City claims that "Corporate Jets and its sister organization, Scottsdale FBO, control an unacceptable oligopoly with the only other FBO on the field - EAM."³³

Therefore, the Director finds the City, in imposing the condition set forth in the Sixth Amendment, which effectively prevents Corporate Jets from bidding, is not granting an exclusive right in violation of 49 U.S.C. 40103(e), nor does it constitute a violation of 49 U.S.C. § 47107(a)(1) through (6).

VIII. FINDINGS AND CONCLUSIONS

Upon review of the allegations made by the Complainant, the relevant airport-specific circumstances, and upon consideration of the submissions and responses by the parties and the entire record, herein, and for the reasons stated above, the Director has determined the following:

The actions of the Respondent in imposing the condition set forth in the Sixth Amendment, which effectively prevents Corporate Jets from bidding, does not result in granting an exclusive right in violation of 49 U.S.C. 40103(e) nor does it constitute a violation of 49 U.S.C. § 47107(a)(1) through (6).

ORDER

ACCORDINGLY,

- (1) The Complaint is dismissed.
- (2) All motions not expressly granted herein are denied.

²⁹ FAA Exhibit 1, Item 1, p. 2.

³⁰ See AC 150-5190-5, Exclusive Rights and Minimum Standards for Commercial Aeronautical Activities, p.2, 4/7/00.

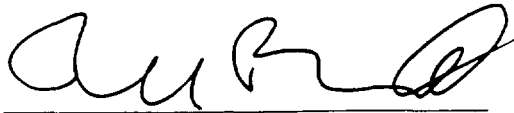
³¹ FAA Exhibit 1, Item 1, p. 1-2.

³² FAA Exhibit 1, Item 5, p. 2, 8.

³³ FAA Exhibit 1, Item 5, p. 2.

RIGHT OF APPEAL

This Director's Determination is an initial agency determination and does not constitute a final agency action subject to judicial review under 49 USC § 46110. *See* 14 CFR 16.247(b)(2). 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(b) within thirty (30) days after service of the Director's Determination.



David L. Bennett

Director

Office of Airport Safety and Standards

MAR 15 2002

Date