

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

	)	
Lanier Aviation LLC	)	
	)	
COMPLAINANT	)	
	)	Docket No. 16-05-03
v.	)	Final 11/25/05
	)	
City of Gainesville, GA	)	
Gainesville Airport Authority	)	
	)	
RESPONDENT	)	

DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) as a complaint filed against the City of Gainesville, Georgia (City) regarding its management of the Lee Gilmer Memorial Airport (Airport) pursuant to the Rules of Practice for Federally-Assisted Airport Proceedings, Title 14 Code of Federal Regulations (CFR) Part 16 (FAA Rules of Practice).

The decision in this matter is based on: (a) applicable law and FAA policy regarding the City's Federal obligations as imposed by grant assurances 22, *Economic Nondiscrimination*, and 23, *Exclusive Rights*, as well as Title 49 United States Code (USC) §47107(a)(1 and 4) and §40103(e); (b) arguments and supporting documentation submitted by the parties; and (c) the administrative record in this proceeding.

With respect to the allegations presented in this Complaint, under the specific circumstances at the Airport as discussed below and based on the evidence of record in this proceeding, the FAA finds the City is not in violation of its Federal obligations.

II. AIRPORT

The Airport is a public-use, general aviation airport located in Hall County, Georgia. The City of Gainesville, Georgia owns the Airport and is the sponsor of Federal grants. [FAA Exhibit 2] The development of the Airport has been financed, in part, with funds provided to the City as the Airport sponsor under the Airport Improvement Program (AIP), authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 USC §47101, *et seq.* [FAA Exhibit 3]. As a result, the City is obligated to comply with the FAA sponsor assurances and related Federal law, 49 USC § 47107. The City also is bound to the terms of a Quitclaim Deed issued pursuant to the Surplus Property Act of 1944, codified as 49 USC §§ 47151 through 47153. [FAA Exhibit 2]

III. BACKGROUND

Procedural History

On March 15, 2005, the FAA received a formal complaint from Lanier Aviation LLC against the City of Gainesville, Georgia and the Gainesville Airport Authority.¹ [FAA Exhibit 1, Item 1]

On April 1, 2005, the FAA issued a Notice advising the City that the Complaint had been docketed and that the Port may file an answer within 20 days pursuant to 14 CFR Part 16. [FAA Exhibit 1, Item 3]

On April 18, 2005, the FAA received documents constituting the City's Answer to the Complaint, including an affidavit. [Item 1, Exhibits 4 and 5]

On April 28, 2005, the FAA received Complainant's Reply. [FAA Exhibit 1, Item 7]

On May 3, 2005, the FAA received a Rebuttal from the City. [FAA Exhibit 1, Item 8]

The parties submitted two more rounds of pleadings to the docket in an extra-procedural exchange regarding the issue of ongoing airport planning being conducted by the FAA's Atlanta Airports District Office. The final pleading, at the time of this writing, was received by the FAA on August 1, 2005.

Factual Background

This section describes the facts relevant to the instant Complaint (FAA Docket No. 16-05-03).

Negotiations prior to City's issuing of fueling minimum standards

On April 18, 1995, the City adopted its "Airport Rules and Regulations." These rules and regulations, or minimum standards, did not contemplate or mention the technology of self-service fueling. [FAA Exhibit 1, Item 1, exh. C]

On October 20, 2003, the President of Lanier Aviation, wrote to the City Manager of Gainesville, proposing discussions on "the placement of self-service fueling facilities at the Gainesville Airport."² [FAA Exhibit 1, Item 1, exh. A]

¹ The Complainant includes the Gainesville Airport Authority as the Respondent. The City's pleadings include mention of the Gainesville Airport Advisory Committee. The FAA has no evidence of the existence of a Gainesville Airport Authority. An Advisory Committee appears to be a creation of the City. The City is the owner and sponsor of the Airport and will be treated as the Respondent in this proceeding. Actions of the City taken under the advice of the Advisory Committee will be considered actions of the Sponsor.

² This letter opens negotiations with the City by citing the Advisory Circular on Minimum Standards and Exclusive Rights. It states that the Complainant's proposed business plan "will assist the city in complying with the federal standards and guidelines as detailed in FAA Advisory Circular 150/5190-5." This Determination will discuss the applicability of this Advisory Circular in relation to the Complainant's fueling proposal.

On January 13, 2004, the City of Gainesville's Airport Advisory Committee (AAC) met to discuss items including Lanier's self-service fueling proposal. The Advisory Committee minutes state:

Mr. Fred Smith, representing Lanier Aviation, gave a presentation including a handout concerning their desire to establish and operate a contained self-serve fueling operation at the Lee Gilmer Airport. Mr. Smith stated it's their desire to 'enhance the current and grow the future operations' of the Gainesville Airport. The fueling operation would first install a 10,000 gal AV-Gas and with a possible second AV-Gas future site. Fueling operations would be for only general aviation fuel not for Jet 'A' fuel. The self-serve fueling facility would be totally self-contained with double wall construction to prevent leakage. Safety features, possible site locations and servicing of the operation were addressed. Fred Smith noted that approximately 25% of all Georgia airports offer self-serve fuel. The required land, ramp and taxi area would be leased from the City and the City would collect \$0.05/gal on all fuel pumped. Mr. Smith stated he would like to proceed with a Letter of Intent from the City and open land lease discussions for site locations. AAC members questioned Mr. Smith concerning maintenance, service response, liability, and security issues. Tim Merritt³ confirmed that if AAC and City Council agreed to offer self-serve fueling, the award for such would be via a competitive bid process as per FAA and City of Gainesville Regulations.

... The AAC, after further discussion, expressed concern that self-serve fuel would bring little if any economic benefit to Gainesville, but rather greater potential liability and risk to the City. Self-serve fueling would attract addition small aircraft traffic resulting in possible noise abatement issues and congestion. Based on all information presented, Jerry Frady motioned the AAC not to recommend self-serve fuel at the present time. Motion was second by Tom Hensley. All members approved the motion. [FAA Exhibit 1, Item 1, exh. B]

Despite this action of the AAC, the Assistant City Manager, wrote to Lanier Aviation on June 18, 2004⁴, describing the numerous ongoing and planned capital improvement projects at the Airport, and offering to revisit Lanier's proposal for self-serve fueling facilities:

Once all of these projects are completed and the airport layout plan is complete, we will be able to identify if there is sufficient land and location for a self-service fuel system. If a suitable location is identified, the city will evaluate the installation of a self-serve fuel system, including guidance from the city's consultant, W.K. Dickson, and the Federal Aviation Administration to ensure compliance with all appropriate rules and regulations.

It must be noted that the city is very concerned about environmental hazards and potential liability to the city; therefore, it is likely we will require significant spill prevention and containment for any self-service fuel system. [FAA Exhibit 1, Item 1, exh. B)

³ Assistant Gainesville City Manager

⁴ The Assistant City Manager acknowledges the delay in writing back to Lanier, but states that the parties had been discussing the Airport Advisory Committee's actions.

On June 28, 2004, Fred Smith of Lanier Aviation wrote the City to suggest that Lanier contact the City's consultant to determine an appropriate location for Lanier's proposed 'Self-Service' fuel operation. [FAA Exhibit 1, Item 1, exh. D]

On August 24, 2004, Fred Smith of Lanier Aviation wrote to the Federal Aviation Administration (FAA) at its Atlanta Airports District Office (ADO) to file a request for an 'informal review' of the City's actions in regard to their consideration of Lanier's self-service fueling proposal. The letter mentions an interest in filing a formal complaint, stating "Per your email dated July 8, 2004, prior to filing a 'formal complaint' against the City of Gainesville, GA concerning the GVL airport, you are required to file an 'Informal Review.'" [FAA Exhibit 1 Item 1, exh. E]

As early as December 14, 2004, Lanier had retained counsel to press its informal complaint against the City in regard to its failure to locate and approve the operation of self-service fueling facilities at its Airport. Lanier's counsel states, "Lanier has alleged, and continues to allege that the City of Gainesville is in noncompliance by granting and protecting to a single Fixed Base Operator the right to sell fuel, while excluding Lanier Aviation from engaging in that activity, in violation of Advisory Circular number 150/5190-5, §1-2." [FAA Exhibit 1, Item 1, exh. G]

City's adoption of fueling minimum standards

The City issued revised Airport rules on January 18, 2005. This document, "Minimum Standards for Airport Aeronautical Service Providers" expands on the prior 1995 document "Airport Rules and Regulations." In regard to aircraft fuel services, the Minimum Standards state, "A Fuel Service FBO provides aviation fuels, lubricants and other services supporting itinerant aircraft operations and operations of aircraft based on or off the airport." Having defined fuel sales as the activity of a FBO (fixed-base operator), the Minimum Standards provide a list of services and amenities that the City requires as minimum standards for those parties engaged in the commercial activity of retailing fuel at the Airport. As cited by the Complainant, these include the provision of:

10. Permanent restroom facilities for personnel and customers.
11. Vehicle parking for customers and employees.
12. A flight planning area with appropriate work areas, communication facilities, directories and all items necessary for complete flight planning.
13. A pilot lounge and waiting area for transition of air passengers to ground transportation and vice versa.
14. The Fuel FBO must provide, by means of an on-site office and telephone, a point of contact for the public desiring to utilize Fuel FBO's services. [FAA Exhibit 1, Item 1, exh. F, p. 12]⁵

⁵ These are the items cited by Lanier in its Complaint. Lanier states that they "are a clear attempt to qualify only the existing FBO to sell fuel at the airport." [FAA Exhibit 1 Item 1, p. 4] Lanier does not state how the City is preventing Lanier from offering services at the airport in accordance with the minimum standards, nor how the City is preventing Lanier from offering services in a manner similar to the existing FBO. Lanier does not state how these

In response to Lanier's informal complaint and considering the FAA's continuing consultation with the City, the ADO issued a response to Lanier's counsel on February 3, 2005. The ADO concluded, "Based on our preliminary evaluation, it is our opinion that the City of Gainesville, owner-operator of Lee Gilmer Memorial Airport, does not appear to have violated the grant obligations as set forth in the Airport Improvement Program nor the intent of Advisory Circular 150/5190-5. However, they need to improve their response time to avoid misunderstandings regarding the operation of the airport." [FAA Exhibit 1, Item 1, exh. I]

Actions of City after adoption of fueling minimum standards

On March 15, 2005, Lanier Aviation filed this formal complaint.

On March 30, 2005, counsel to the City, Alan Armstrong, wrote to inquire about the status of Lanier's formal complaint. Armstrong stated that he had not had an opportunity to participate in discussions with Lanier Aviation, prior to its filing of its formal complaint. He stated, "I would like to have an opportunity to participate in discussions with Lanier Aviation and its counsel, as well as with my client, in order to determine if the concerns of Lanier Aviation as expressed in its formal Complaint may be addressed. Perhaps some common ground can be found." [FAA Exhibit 1, Item 2]

On April 1, 2005, The FAA's Office of Chief Counsel docketed the Formal Complaint filed by Lanier Aviation, giving rise to this investigation and this Director's Determination.

Since the FAA's acceptance of the Complaint, the parties began submitting pleadings to the FAA according to Part 16 procedures. Also, the parties continued discussing the proposal to locate a self-service fueling facility (apparently these facilities would be in accordance with the City's Minimum Standards) at the Airport, as part of the City's Airport planning process. The parties submitted evidence of these discussions in extra-procedural filings after the City's Rebuttal. [FAA Exhibit 1, Items 10-13]

Specifically, these pleadings present evidence that the City did move forward with its Airport Layout Plan (ALP) process as predicted in its regular pleadings to the Part 16 Docket, submitting an ALP to the FAA on June 30, 2005. [FAA Exhibit 1, Item 11, p. 2]

IV. ISSUES

The Complaint by Lanier Aviation, LLC (Complainant) raises the following issues for FAA consideration:

- 1. Whether City's failure to grant a leasehold to the Complainant despite the Complainant's alleged status as a Specialized Aviation Services Operator (SASO) constitutes a violation of grant assurance 22, Economic Nondiscrimination.*

requirements are specifically unreasonable, other than to say they are not consistent with Lanier's retail fueling proposal as a "Specialized Aviation Service Operation (SASO)."

2. *Whether City's alleged delay in approving the Complainant's business proposal constitutes a violation of grant assurance 22, Economic Nondiscrimination.*
3. *Whether the City's Minimum Standards are sufficiently unreasonable as to deny access to Complainant or unjustly discriminate in favor of the incumbent FBO in violation of grant assurance 22, Economic Nondiscrimination.*
4. *Whether City's actions of alleged delay, unreasonable standards, or unjust discrimination against self-service retail fuel as specifically proposed by the Complainant constitutes the granting of an unlawful exclusive right under grant assurance 23, Exclusive Rights and 49 USC § 40103(e).*

V. APPLICABLE LAW AND POLICY

The Federal Aviation Act of 1958, as amended (FAAAct), 49 USC § 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 developing civil aviation has been augmented by various legislative actions that authorize programs for providing funds and surplus Federal property 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, efficiently, and in accordance with specified conditions.

The planning and development of the Airport has been financed, in part, with funds provided by the FAA under the Airport Improvement Program, authorized by the Airport and Airway Improvement Act of 1982, (AAIA), 49 USC § 47101 *et seq.* This program provides financial assistance to an airport sponsor for airport development in exchange for binding commitments designed to assure that the public interest will be served. These commitments are set forth in the sponsor's applications for Federal assistance and in the grant agreement as sponsor assurances, *i.e.*, a list of applicable Federal laws, regulations, executive orders, statute-based assurances, and other requirements binding the sponsor upon acceptance of the Federal assistance. Pursuant to 49 USC § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their sponsor assurances.

The City also is bound to the terms of a Quitclaim Deed issued pursuant to the Surplus Property Act of 1944, codified as 49 USC §§ 47151 through 47153.

FAA Order 5190.6A, *Airport Compliance Requirements*, (hereinafter Order) provides 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 and restrictive covenants in property deeds and conveyance instruments.

The Airport Sponsor Assurances and Deed Covenants

The AAIA, 49 USC § 47107, et seq., sets forth assurances to which an airport sponsor receiving Federal financial assistance must agree as a condition precedent to receipt of such assistance. Pursuant to 49 USC § 47107(g)(1), the Secretary is authorized to prescribe project sponsorship requirements to ensure compliance with 49 USC § 47107. These sponsorship requirements are included in every AIP agreement as explained in the Order, Chapter 2, “Sponsor’s Obligations.” Upon acceptance of an AIP grant by an airport sponsor, the assurances become a binding obligation between the airport sponsor and the Federal government.

The City is also bound to the terms of deeds issued pursuant to the Surplus Property Act of 1944, codified as 49 USC §§ 47151 through 47153.⁶

A Surplus Property Deed provides, in relevant part, that “. . . the property transferred hereby . . . shall be used for public airport purposes, and only for such purposes, on reasonable terms and without unjust discrimination and without the grant or exercise of any exclusive right for use of the airport” The Deed further provides that upon breach of any deed term the land shall, at the option of the United States, revert to the United States.⁷ [See also 49 USC § 47152(8)]

These deed covenants, as also cited by the Complainant, are the same as the Federal grant assurances discussed below and that are also imposed upon the City. Our analysis and enforcement of the obligations is identical. The following assurances are relevant to this current complaint: Federal grant assurance 22, *Economic Nondiscrimination*, and Federal grant assurance 23, *Exclusive Rights*. These are discussed below.

Federal Grant Assurance 22, Economic Nondiscrimination

Federal grant assurance 22, *Economic Nondiscrimination*, deals with the sponsor's obligation to make the airport available for aeronautical use on reasonable and not unjustly discriminatory terms.

Grant assurance 22, *Economic Nondiscrimination*, of the prescribed sponsor assurances implements the provisions of 49 USC §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. [grant assurance 22(a)]

...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. [grant assurance 22(h)]

⁶ The Complainant cites this receipt of surplus property and the associated deed covenants. The City acknowledges its Federal grant obligations in its answer.

⁷ FAA Exhibit 1, Item 4, Exhibit B

...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. [grant assurance 22(i)]

Subsection (h) qualifies subsection (a), and subsection (i) represents an exception to subsection (a) to permit the sponsor to exercise control of the airport sufficient to preclude unsafe and inefficient conditions, which would be detrimental to the civil aviation needs of the public.

The grant assurance specifically addresses the issue of the treatment of fixed-based operators (FBOs), stating that “Each fixed-based operator at the airport 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). Subsection (c) specifies the application of subsection (a) to the treatment of FBOs, providing additional specific guidance as to the sponsor obligations.

The Order describes the responsibilities under grant assurance 22, *Economic Nondiscrimination*, assumed by the owners 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. [See Order, Secs. 4-14(a)(2) and 3-1.]

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. [See Order, Sec. 3-8(a).]

Federal Grant Assurance 23, Exclusive Rights

The Prohibition against the grant of an exclusive right is found in grant assurance 23, *Exclusive Rights*. This assurance 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... It 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...

The FAA Act, 49 USC § 40103(e), provides, in relevant part, that a "person does not have an exclusive right to use an air navigation facility on which Government money has been expended." [49 USC §40103(e)] An “air navigation facility” includes an “airport.” [See 49 USC §§ 40102(a)(4), (9), (28).]

49 USC § 47107(a)(4), similarly provides, in pertinent part, that "a person providing or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport."

In the Order, 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 has taken the position that the application of any unreasonable requirement or any standard that is applied in an unjustly discriminatory manner may constitute the constructive grant of an exclusive right. However, a sponsor is under no obligation to permit aircraft owners to introduce onto the airport equipment, personnel, or practices which would be unsafe, unsightly, detrimental to the public welfare, or which would affect the efficient use of airport facilities. [See Order, Sec.3-9(e).]

The 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. The FAA incorporates these obligations in grant agreements and instruments of conveyance to protect the public's interest in civil aviation and to ensure compliance with Federal laws.

The FAA designed the Airport Compliance Program to ensure the availability of a national system of safe and properly maintained public-use airports that airport sponsors operate in a manner consistent with their 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 that airport sponsors pledge to the people of the United States in exchange for monetary grants and donations of Federal property to ensure that airport sponsors serve the public interest.

The Order 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 for FAA personnel to follow in carrying out the FAA's responsibilities for ensuring airport compliance. The Order provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments airport owners make to the United States as a condition for receiving Federal funds or Federal property for airport purposes. The Order, *inter alia*, analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the application of the assurances in the operation of public-use airports, and facilitates the interpretation of grant assurances by FAA personnel.

As an aid to airports, the FAA has issued Advisory Circular AC 150-5190-5, "Exclusive Rights and Minimum Standards for Commercial Aeronautical Activities." (Advisory Circular):

This advisory circular (AC) provides basic information pertaining to the Federal Aviation Administration's (FAA's) exclusive rights and minimum standards policies, which, in part, describe the contractual grant obligations assumed by the operators of public airports. Airports that have accepted Federal assistance must comply with the

statutory prohibition on exclusive rights. Advice provided with respect to minimum standards is optional but highly recommended. [See AC 150/5190-5 (1)]

The Complaint Process

Pursuant to 14 CFR, Part 16, §16.23, a person directly and substantially affected by any alleged noncompliance 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. The complaint shall also describe how the complainant was directly and substantially affected by the things done or omitted by the respondents. [14 CFR, Part 16, §16.23(b)(3,4)]

If, based on the pleadings, there appears to be 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 that it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance. [14 CFR, Part 16, §16.29]

The proponent of a motion, request, or order has the burden of proof. A party who has asserted an affirmative defense has the burden of proving the affirmative defense. This standard burden of proof is consistent with the Administrative Procedure Act (APA) and Federal case law. The APA provision states, “[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof.” 5 USC §556(d). *See also, Director, Office of Worker’s Compensation Programs, Department of Labor v. Greenwich Collieries*, 512 US 267, 272 (1994); *Air Canada et al. v. Department of Transportation*, 148 F3d 1142, 1155 (DC Cir, 1998). Title 14 CFR §16.229(b) is consistent with 14 CFR §16.23, which requires that the complainant must submit all documents then available to support his or her complaint. 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

As noted above under Section IV, the FAA has identified four issues implied by the Complaint. The Complaint itself focuses on the Complainant’s allegation that its specifically-proposed business plan (self-service, automated fuel retailing) is a Specialized Aviation Services Operation (SASO) as described in Advisory Circular AC 150-5190-5, “Exclusive Rights and Minimum Standards for Commercial Aeronautical Activities.” (Advisory Circular) and, therefore, must be quickly accommodated by the sponsor by force of the Advisory Circular.⁸ However, the Complaint also contains mention, but not extensive argument or evidence, of other

⁸ The Advisory Circular, itself does not impose Federal obligations. Rather Federal law, grant assurances and quitclaim deeds impose obligations. This advisory circular provides advice to a sponsor in complying with the Federal obligations. This advisory circular (AC) provides basic information pertaining to the Federal Aviation Administration’s (FAA’s) exclusive rights and minimum standards policies, which, in part, describe the contractual grant obligations assumed by the operators of public airports. Airports that have accepted Federal assistance must comply with the statutory prohibition on exclusive rights. Advice provided with respect to minimum standards is optional but highly recommended. [See AC 150/5190-5 (1)]

elements more directly related to the City's Federal obligations under its grant assurances and quitclaim deeds.

This case is less a dispute over facts, but rather a dispute over the standards for sponsor compliance. The Director has consistently applied a general standard of compliance to the airport specific circumstances in all compliance cases. This standard is found in the Order:

The judgment to be made in all cases is whether the airport owner is reasonably meeting the Federal commitments. It is the FAA's position that the airport owner meets commitments when: (a) the obligations are fully understood, (b) a program (preventive maintenance, leasing policies, operating regulations, etc.) is in place which in the FAA's judgment is adequate to reasonably carry out these commitments, and (c) the owner satisfactorily demonstrates that such a program is being carried out. [Order, Sec 5-6(a)(2)]

These obligations are the obligations contained in the grant assurances, surplus property deeds and Federal law. Advisory Circular AC 150-5190-5 does not impose obligations on a sponsor separate from those imposed by the assurances and Federal law that apply to the issues presented in this Complaint. Rather, the Advisory Circular provides advice. Consequently, the Director will examine the record regarding the related issues in light of the sponsor's obligations under grant assurances 22 and 23 and Federal Law. These issues are 1) an alleged denial of access by "refusing to grant Complainant's specific request for a permit to sell 'self-serve' on the airport" even though the business plan allegedly qualifies as a SASO; 2) denial of access by delay; 3) denial of access by unreasonable standards; and 4) the constructive granting of an exclusive right to the incumbent fuel retailer.

Issue (1) *Whether City's failure to grant a leasehold to the Complainant despite the Complainant's alleged status as a Specialized Aviation Services Operator (SASO) constitutes a violation of grant assurance 22, Economic Nondiscrimination.*

The Complaint states that the City has refused "Complainant's specific request for a permit to sell 'self-serve' fuel on the airport." [FAA Exhibit 1, Item 1, p. 3] The Record does contain evidence that shows that the City had not approved a permit or leasehold for the Complainant's specific business proposal over the course of approximately 17 months since the Complainant's first written request. However, the Complainant does not cite how this denial is unreasonable, other than to allege that the City intends to protect the incumbent fuel retailer and to deny the proponent's specific proposal for 'self-serve fuel.' [FAA Exhibit 1, Item 1, pp. 3-4] The Complainant focuses on the allegation that the City is obligated to agree to its specific business plan in order to avoid granting an exclusive right to the existing fuel retailer.

The Complainant does cite the Advisory Circular. It alleges that the City is "granting and protecting to a single Fixed Base Operator the right to sell fuel, while excluding others, including Complainant, in violation of Advisory Circular number 150/5190-5, §1-2." [FAA Exhibit 1, Item 1, p. 3] The Complainant goes on to state that the City violates the Advisory Circular, "in that they do not allow for the establishment of a Specialized Aviation Service Operation (SASO)." [FAA Exhibit 1, Item 1, p. 4]

The City answers, “While Gainesville had not articulated minimum standards for a SASO like Lanier desires to be at the time of Lanier’s request on October 20, 2003, the City of Gainesville has brought itself into compliance and is currently in compliance by virtue of adopting the airport minimum standards.”⁹ [FAA Exhibit 1, Item 4, p. 5] As cited by the City §2-2(f) of the Advisory Circular states that “this is not to say that all SASOs providing the same or similar services should not equally comply with all applicable minimum standards... An airport sponsor should develop reasonable, relevant, and applicable standards for each type and class of service...” [FAA Exhibit 1, Item 4, p. 2]

The Director notes that aviation fuel retailing, including the aviation fuel retailing proposed by the Complainant, is not a SASO as discussed in the Advisory Circular. Fuel retailing is not listed as an example of a SASO. [See AC 150/5190-5, App. 1-1(p)] Neither grant assurance 22, nor any other Federal obligation of an airport sponsor, requires an airport sponsor to recognize a ‘self-service retail fuel operation’ as proposed by the Complainant as a SASO. The Complaint relies heavily on the notion that the limited nature of the Complainant’s business plan defines it as a SASO and that an airport sponsor must allow a SASO in conformance with the specific business plan proposed. This is an inadequate and incorrect conclusion drawn by the Complainant. Instead of addressing an alleged violation of the sponsor’s actual Federal obligations, the Complainant chooses to use the Advisory Circular’s ‘SASO’ concept as a faulty substitute for the Sponsor’s Federal obligations under grant assurance 22 and the congruent surplus property obligations. Furthermore, under grant assurance 22, a sponsor may reasonably classify a ‘self-serve’ retail fuel operation as part of a classification of a range of aviation services including all retail aviation fueling, as long as the standards are reasonable. The Advisory Circular does not amend the Sponsor’s Federal obligations to include a requirement that it recognize a ‘self-serve’ retail fuel operation as a SASO, or that the Sponsor provide special access to a ‘self-serve’ retail fuel provider.

As stated by the City, neither the City’s Federal obligations nor the Advisory Circular prevent a sponsor from issuing minimum standards regarding the required level-of-service associated with retailing aviation fuel at the Airport. In fact, the FAA relies on airport sponsors to create minimum standards for the provision of aviation services at its airport which best serve the civil aviation interests of the public. These standards may address the current needs of the local aeronautical users and/or respond to the needs of itinerant users, as well as induce the provision of services that would otherwise not be available without such standards. [See AC 150/5190-5, 2-2(a)]¹⁰

The Complainant focuses its argument on the notions that it is a SASO and that the Advisory Circular requires the City to agree to its specific business proposal. Neither of these arguments is accurate. The City is not required to recognize a fuel retailer as a SASO; and the Advisory

⁹ The Sponsor issued new minimum standards in January 2005 that provided certain requirements of all commercial operators retailing fuel at the Airport. These minimum standards were adopted prior to the filing of the formal Complaint in this case.

¹⁰ AC 150/5190-5, 2-2(a) states, “The FAA policy for recommending the development of minimum standards serves the objective of promoting safety in all airport activities, maintaining a higher quality of service for airport users, protecting airport users from unlicensed and unauthorized products and services, enhancing the availability of adequate services for all airport users, and promoting the orderly development of airport land.”

Circular does not require the City to accept any business proposal that consists of some subset of services offered by other businesses on the Airport. Minimum standards may reasonably require that certain aeronautical services be bundled with fuel retailing or require a specific level of service for all fuel retailers to meet. [See AC 150/5190-5, 2-2(a)] This is common industry practice by airport management to ensure that a variety of aeronautical services are available at the airport at a reasonable, determined level of service quality, and not just the services that require the least investment or expense, or are most profitable.

Considering the specific issue of the Advisory Circular and the Complainant's claim to be a SASO, discussed above, the Director cannot find that the City's failure, as of the filing of the Complaint, to agree to a lease with the Complainant is a violation the City's Federal obligations. Namely, this is not possible because the Advisory Circular does not require the City to recognize a fuel retailer as a SASO; and the Advisory Circular does not prohibit the City from reasonably bundling services with retail fueling or requiring a reasonable level-of-service with retail fueling. Finally, a sponsor's failure to manage an airport in a manner consistent with the Advisory Circular is not an automatic violation of a sponsor's Federal obligations. The Complainant must establish that a sponsor's actions are inconsistent with Federal grant assurances, in this case, grant assurances 22 and 23.

To the extent that the Complainant raises objections to the reasonableness of the specific standards adopted by the City prior to the Complaint, or raises objections to the responsiveness of the City, they are discussed in Issues 2 and 3 below. Finally, the question of the alleged granting of an exclusive right is discussed in Issue 4.

Issue (2) *Whether City's alleged delay in approving the Complainant's business proposal constitutes a violation of grant assurance 22, Economic Nondiscrimination.*

The Complainant states, "The City has responded only negatively and with delay tactics to requests from Complainant made since October, 2003. This further demonstrates the City's intent to continue the grant of exclusive rights to Champion Aviation Services, Inc. to sell fuel." [FAA Exhibit 1, Item 1, p. 6]

The City states that the parties are continuing to move forward with the necessary steps to accommodate the Complainant's proposal. The City states:

There is no dispute about the fact that the City of Gainesville has taken some time in acting on the request of the Complainant to establish a single-service fuel facility on the airport. However, this situation must be placed in a proper context. The airport is undergoing improvements. A new Airport Layout Plan ("ALP") is underway.... The relocation of the taxiway is going to reduce the space available on the apron or tarmac of the airport for.... aircraft... It is further true upon the writing of this Rebuttal that counsel for both parties to this litigation and their clients are scheduled to meet... to see if some common ground can be met [FAA Exhibit 1, Item 8, pp. 3-4]

Also, the Assistant City Manager, provided an affidavit stating:

At the time Lanier Aviation made its initial request, the date being October 20, 2003, the City of Gainesville did not have Airport Minimum Standards relating to a single-service self-fueling facility on the airport. I began to investigate this matter. I attended a trade convention of other airport operators. I conducted research. I looked for standards that were reasonable. My work and research culminated in the adoption of Minimum Airport Standards... adopted January 18, 2005 by the City of Gainesville.

As a representative of the City of Gainesville, I can truthfully state that if Lanier Aviation will comply with Gainesville's Airport Minimum Standards, and assuming space is available on the airport..., then Lanier Aviation will be able to compete on a fair and non-discriminatory basis... to provide self-service fuel on the Gainesville Airport when space is identified in the ALP process currently ongoing. [FAA Exhibit 1, Item 5]

In an effort to encourage continuing deliberate actions by the City to consider the location of additional fueling operations on the Airport, the FAA's Airports District Office (ADO) concluded the informal investigation on February 3, 2005, noting the new Minimum Standards for the Airport, and stating:

... it is our opinion that the City of Gainesville... does not appear to have violated the grant obligations as set forth in the Airport Improvement Program nor the intent of Advisory Circular 150/5190-5. However, they need to improve their response time to avoid misunderstandings regarding the operation of the airport. [FAA Exhibit 1, Item 1, exh. I]

The Director finds that the record is insufficient to determine that the alleged and admitted time lapse between the first written proposal of the Complainant¹¹ and the adoption of new Minimum Standards by the City is sufficiently delayed to amount, by itself, to a denial of access, unjust discrimination or an exclusive rights violation. While the ADO may have wished to spur the City forward, it did not make a finding of non-compliance. Also, the standard for compliance, as quoted above, is that the sponsor understands its obligations; has a program in place to adhere to the obligations (including the adoption of minimum standards); and demonstrates implementation of that program. The behavior of the City as discussed in this Determination, prior to the filing of this formal complaint (and even after the filing of the formal complaint) demonstrate that the City has met this standard of compliance by accepting the FAA's guidance during the informal complaint process, implementing standards in January 2005, and continuing to discuss the site locations with the Complainant.¹²

¹¹ The Director notes that this first proposal submitted to the Record from the Complainant mentions to the City that the City's agreement with the Complainant's proposal would "assist the city in complying with the federal standards and guidelines as detailed in FAA Advisory Circular 150/5190-5." [FAA Exhibit 1, Item 1, exh. A]

¹² After the submission of the Complaint, the parties continued discussing where to locate a self-service fueling facility at the Airport, as part of the City's Airport planning process. The parties submitted evidence of these discussions in extra-procedural filings after the City's Rebuttal. [FAA Exhibit 1, Items 10-13] Specifically, these pleadings present evidence that the City did move forward with its Airport Layout Plan (ALP) process as predicted in its regular pleadings to the Part 16 Docket, submitting an ALP to the FAA on June 30, 2005. [FAA Exhibit 1, Item 11, p. 2] Despite the Complainant's allegation of delay in its Complaint, the Complainant has submitted a

The record supports the conclusion that the City's posture is reasonably compliant with regard to locating another fuel retailer in accordance with reasonable standards. Issue 3 discusses the question of reasonable standards further.

Issue (3) *Whether the City's Minimum Standards are sufficiently unreasonable as to deny access to Complainant or unjustly discriminate in favor of the incumbent FBO in violation of grant assurance 22, Economic Nondiscrimination.*

In regard to the City's imposition of reasonable minimum standards for the conduct of retail fueling on its Airport, the Complainant states that the City passed

new 'Airport Minimum Standards' on January 18, 2005 that again violate the [Advisory] Circular in that they do not allow for the establishment of a Specialized Aviation Service Operation (SASO), but require the operation to provide permanent restroom facilities for personnel and customers, vehicle parking for customers and employees, a flight planning area with work areas, communication facilities, directories, and all items necessary for complete flight planning, a pilot lounge and waiting area for transition of air passengers to ground transportation and vice versa, and an on-site office and telephone. These new standards are a clear attempt to qualify only the existing FBO to sell fuel at the airport. [FAA Exhibit 1, Item 1, p. 4]

FAA's review of the 2005 Minimum Standards confirm that the new Standards do require the above-described level-of-services and facilities of all fuel retailers. [FAA Exhibit 1, Item 1, exh. F, sec. 14] However, these requirements are considerably less than that required of the incumbent FBO in its lease with the City. The incumbent FBOs lease requires it to provide aircraft ground guidance; sale and into-aircraft of aviation fuels, including Avgas and jet fuel; lubricants; aircraft storage and tiedowns; aircraft airframe, engine, assemblies and accessories, maintenance, repairs and replacements; aircraft towing; sale of aircraft parts; etc. [FAA Exhibit 1, Item 7, exh. K, p. 3] The Record reflects that the Complainant has only proposed the sale of fuel. The Airport Advisory Committee minutes, dated January 16, 2004, summarize Lanier's proposal: "The fueling operation would first install a 10,000 gal AV-Gas and with a possible second AV-Gas future site. Fueling operations would be for only general aviation fuel not for Jet 'A' fuel." [FAA Exhibit 1, Item 1, exh. B]

The Complainant does not argue how the specific requirements of the minimum standards are unreasonable, other than they are in excess of its proposal and that its proposal is for a "SASO" that the City is required to accommodate.¹³ The Record is without argument as to how this level-of-service requirement is excessive to the needs or desires of airport users; is impossible for the Complainant to achieve; or is otherwise in excess of a level-of-service designated by the City to achieve a reasonable business goal to develop aeronautical services at the Airport. Again,

request, in an extra-procedural filing, asking the FAA to delay the general airport planning process that has been considering locations for a self-service fuel facility at the Airport. [FAA Exhibit 1, Item 10] The FAA has taken no action to delay or hasten the ALP process at the Airport.

¹³ As discussed above, that argument is insufficient to the question of the Sponsor's compliance with its Federal obligations to provide reasonable access.

Complainant's argument focuses on the notion that the Advisory Circular compels the City to accept the Complainant's business plan as proposed.

The City answers, "On January 18, 2005, Gainesville adopted reasonable, relevant and applicable standards that would apply to Lanier's request to dispense self-service fuel on the airport. Moreover, in a conference call between counsel for the City of Gainesville and personnel employed by the Federal Aviation Administration, Atlanta Airport District Office of April 5, 2005, FAA personnel said that Section 14 of Gainesville's Airport Minimum Standards are reasonable."¹⁴ [FAA Exhibit 1, Item 4, p. 2]

Complainant replies,

"Respondent looks to minimum standards that require the Complainant to comply 'with the same minimum standards imposed on the existing FBO.' This is exactly what is not permissible. The existing FBO is under contract to provide far more services (all for a profit) than Lanier has applied to supply, including: line services, fuel sales, aircraft storage and tie-downs, aircraft maintenance and repairs, aircraft towing, sales of aircraft parts. The city also provides the existing FBO with leased premises consisting of the main terminal building and adjacent apron, ramp, grassy areas and vehicle parking. Furthermore, the city allows the existing FBO as part of that lease to engage in 'any other general aviation service not specifically provided for' in the lease." [FAA Exhibit 1, Item 7, p. 5]

Finally, the City rebuts with

... the Complainant rails against the Standards as unfair and unjust without explaining how or in what manner the allegation becomes a factual reality. In fact, nothing could be further from the truth. Respectfully, the Complainant wants not to compete with the existing FBO on the airport or other interested parties on terms that are fair and reasonable; rather, it seeks an economic advantage over the existing FBO and has pursued this litigation in hopes of satisfying that ultimate objective. [FAA Exhibit 1, Item 8, p. 6]

The Complainant's interpretation of the City's Federal obligations is inaccurate. As a consequence, the Complainant fails to argue how, or in what manner, the City's Minimum Standards are unreasonable. The City's position that its Minimum Standards are reasonable is unchallenged on substance by the Complainant. In a Part 16, the complainant must show how a sponsor's standards, rules, behavior or planning are unreasonable. It is not enough to state that the sponsor's standards are not consistent with any one particular business plan preferred by the proponent. The Director must be able to find, by a preponderance of reliable and probative evidence, that a sponsor has acted outside of compliance by acting in an unreasonable manner to

¹⁴ In the Complainant's Reply, it admits, "in a conference call, personnel from the local ADO did opine after a cursory review of the Minimum Standards that Section 14 appeared reasonable. They did not, however, conclude that the City's application of those standards, or their actions toward the Complainant were reasonable at all." [FAA Exhibit 1, Item 7, p. 3] Again, the Complainant does not describe how the Sponsor's application was actually unreasonable.

deny access. Simply not agreeing to a specific proposal is insufficient evidence of unreasonable denial of access by a sponsor.

To emphasize, the Director's role in determining compliance is to determine whether or not a sponsor has a program in place that reasonably adheres to its Federal obligations. A sponsor is not obligated to agree to a specific business plan with a specific proposed level-of-service, however reasonable it may be, when a sponsor provides a reasonable set of standards allowing the activity at the airport. The FAA has found in *Santa Monica Airport Association (SMAA), Krueger Aviation, and Santa Monica Air Center v. City of Santa Monica, CA*, FAA Docket No. 16-99-21 (February 4, 2003), that:

We find that the Director's finding that no entity is 'entitled' to a long term lease at the location of its choosing and upon its preferred terms and conditions is correct. A sponsor is not required to develop any and all parcels of land in a manner consistent with the wishes of any one party, but rather may exercise its proprietary rights and powers to develop and administer the Airport's land in a manner consistent with the public's interest. [SMAA FAD, 16-99-21, p. 19]¹⁵

Similarly, in this case, the Complainant is not entitled to a lease for its specific preferred business plan, but the City is required to have a reasonable set of rules that generally permit activity at the Airport in pursuit of the public's interest in aviation. The Complainant does not convince the Director that the Minimum Standards adopted by the City are inherently unreasonable to rise to the level of a violation of grant assurance 22. Instead, the Complainant pursues the circular argument that the City is protecting the incumbent FBO and therefore is in violation of the Advisory Circular that prohibits the protection of an incumbent FBO from competition. But the Complainant never gets around to explaining how the City is implementing unreasonable standards, other than the issue of delay, discussed and dismissed, above.

Apart from the question of reasonable standards, is the question of unjust economic discrimination, which is also prohibited by grant assurance 22. Again, the Complainant argues that the City is discriminating in favor of the incumbent FBO by not agreeing to the Complainant's specific preferred business plan. However, the Complainant states, "Respondent looks to minimum standards that require the Complainant to comply 'with the same minimum standards imposed on the existing FBO.' This is exactly what is not permissible." [FAA Exhibit 1, Item 7, p. 5] This is an inaccurate characterization of the City's Federal obligations. The City may apply consistent, reasonable standards to fuel retailers.¹⁶ The record reflects that the City listened to the Complainant's proposal; researched minimum standards that would address the issue of self-serve retail fuel; and adopted a new set of standards that would allow self-serve retail fuel under requirements less expansive than that required of the existing FBO under the terms of its lease with the City. The fact that these new Minimum Standards do not appear to

¹⁵ SMAA is currently under review in the 9th Circuit Court of Appeals. See also *Pacific Coast Flyers Inc. et al v. San Diego, CA*, FAA Docket No. 16-04-08, Director's Determination, July 25, 2005.

¹⁶ Modification of minimum standards to prohibit an activity that would be allowed under currently adopted minimum standards, even if the new standard is reasonable, could be evidence of unjust economic discrimination. A sponsor should not alter appropriately adopted minimum standards simply to disallow a prospective tenant that is negotiating a leasehold at the airport.

satisfy the Complainant is not sufficient evidence that they are either unreasonable or unjustly discriminatory. In fact, the Complainant admits that they are “the same minimum standards imposed on the existing FBO.” [FAA Exhibit 1, Item 7, p. 5]

Considering the above, the Director cannot find by a preponderance of reliable and probative evidence that the City is in violation of its Federal obligations under grant assurance 22 by means of unreasonable standards. The Director cannot find that the City has unjustly discriminated against the Complainant in violation of grant assurance 22.

Issue (4) *Whether City’s actions of alleged delay, unreasonable standards, or unjust discrimination against self-service retail fuel as specifically proposed by the Complainant constitutes the granting of an unlawful exclusive right under grant assurance 23, Exclusive Rights and 49 USC § 40103(e).*

As discussed above, the Director is not able to sustain any allegation of an unreasonable denial of access or unjust economic discrimination. Therefore, the FAA cannot determine that the City has constructively granted an exclusive right as a result of any action or inaction of the City alleged by the Complainant, individually, or in combination with any or all other allegations. Other than a constructive granting of an exclusive right, the Complainant does not allege an explicit exclusive right granted to any entity by agreement with the City.

However, the Complainant does submit a copy of the lease between the City and the incumbent FBO, Champion Aviation Services, Inc., as evidence showing that the incumbent FBO offers more services than the Complainant proposes to offer. This lease includes the following provision at Section 25.1:

Except the exclusive right of Lessee to possession of the Leased Premises, no exclusive rights at the Airport are granted by this Agreement and no greater rights or privileges with respect to the use of the Leased Premises or any part thereof are granted or intended to be granted to the Lessee by this Agreement, or by any provision thereof, than the right and privileges expressly and specifically granted hereby. [FAA Exhibit 1, Item 7, exh. K, p. 34]

This provision is generally consistent with FAA’s requirements to clarify that an aviation lease does not explicitly grant an exclusive right as prohibited by Federal law, grant assurances and quitclaim deeds of Federal surplus property.

Therefore, the record, by a preponderance of reliable and probative evidence, does not support the allegation that the City has granted an exclusive right in violation of 49 USC § 40103(e) or Federal grant assurance 23.

VII. CONCLUSION

Based on the foregoing discussion and analysis, which takes into account the procedural history and background information as well as the applicable law and policy, the Director finds that the City is not in violation of 49 USC § 47107(a)(1 and 4) and § 40103(e) or its Federal obligations pursuant to grant assurances 22, *Economic Nondiscrimination* and 23, *Exclusive Rights*.

ORDER

Accordingly, it is ordered that:

1. The Complaint is dismissed.
2. All Motions not expressly granted in this Determination are denied.

RIGHT OF APPEAL

This Director's Determination, FAA Docket No. 16-02-07, is an initial agency determination and does not constitute a final agency decision and order subject to judicial review. [14 CFR § 16.247(b)(2)] A party adversely affected by the Director's Determination may appeal the 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.

Signed,

Signed

11/25/05

David L. Bennett
Director, Office of Airport
Safety and Standards

Date

Lanier Aviation, LLC
v.
City of Gainesville, Florida

Docket No. 16-05-03

INDEX OF ADMINISTRATIVE RECORD

- Item 1** March 15, 2005, Complaint filed by Christopher T. Anderson, Attorney for Complainant, on behalf of Lanier Aviation LLC.
- Exhibit A 10-20-03, Letter to Bryan Shuler, Gainesville City Manager, from Michael Caudell, Lanier Aviation LLC.
- Exhibit B 06-18-04, Letter to Lanier Aviation LLC from Tim Merritt, Asst. Gainesville City Manager forwarding Airport Advisory Committee Meeting minutes of January 16, 2004.
- Exhibit C 04-18-95, Airport Rules and Regulations passed by Resolution of the Gainesville City Counsel.
- Exhibit D 06-28-04, Letter to Asst. City Manager from Lanier Aviation LLC.
- Exhibit E 08-14-04, Informal Complaint to FAA Atlanta Airports District Office from Counsel to Lanier Aviation LLC.
- Exhibit F 01-18-05, New Airport Minimum Standards passed by Resolution of the Gainesville City Counsel.
- Exhibit G 12-14-04, Letter to FAA Atlanta Airports District Office from Counsel to Lanier Aviation LLC attaching prior correspondence between the parties and indexed elsewhere.
- Exhibit H 01-18-05, Letter to FAA Atlanta Airports District Office from Lanier Aviation LLC.
- Exhibit I 02-03-05, Letter to Counsel of Complainant from FAA Atlanta Airports District Office.
- Item 2** March 30, 2005, Notice of Appearance of City's counsel and request for stay.
- Item 3** April 1, 2005, FAA Notice of Docketed Complaint 16-05-03.

- Item 4** April 18, 2005, Answer and Motion to Dismiss filed by Alan Armstrong, Attorney, on behalf of City.
- Exhibit 1 01-18-05, New Airport Minimum Standards passed by Resolution of the Gainesville City Counsel, same as Item 1, Exhibit F.
- Exhibit 2 02-03-05, Letter to Counsel to Complainant from FAA Atlanta Airports District Office, same as Item 1, Exhibit I.
- Item 5** April 18, 2005, Affidavit of Timothy Merritt, Asst. City Manager, Gainesville, GA.
- Item 6** April 27, 2005, Notice of Leave of Absence of Counsel to the City.
- Item 7** April 28, 2005, Complainant's Reply to Respondent's Answer and Motion to Dismiss.
- Exhibit J various dates, AirNav.com webpage listing fuel prices near the Airport.
- Exhibit K 05-28-98, Lease Agreement between the City and Champion Aviation Services.
- Item 8** May 3, 2005, City's Rebuttal.
- Item 9** May 11, 2005, Notice of Leave of Absence of Counsel to the Complainant..
- Item 10** July 7, 2005, Complainant's extra-procedural Supplemental Information.
- Item 11** July 13, 2005, City's answer to extra-procedural filing of Complainant.
- Item 12** July 14, 2005, Complainant's extra-procedural reply.
- Item 13** August 1, 2005, City's extra-procedural response.