

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

<hr/> <b>Springfield Flight Academy</b>	)	
	)	
<b>COMPLAINANT</b>	)	
	)	
v.	)	<b>Docket No. 16-10-03</b>
	)	
<b>City of Springfield</b>	)	
	)	
<b>RESPONDENT</b>	)	
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**DIRECTOR'S DETERMINATION**

**I. INTRODUCTION**

This matter is before the Federal Aviation Administration (FAA) based on a formal complaint filed in accordance with the *Rules of Practice for Federally-Assisted Airport Enforcement Proceedings*, Title 14 Code of Federal Regulations (CFR) Part 16.<sup>1</sup>

Springfield Flight Academy filed a formal complaint pursuant to Title 14 CFR Part 16 against the City of Springfield, Ohio (Respondent or City) owner, sponsor, and operator of the Springfield-Beckley Municipal Airport (Airport), Springfield, Ohio.

The Complainant alleges the Respondent engaged in economic discrimination as a result of certain management practices in violation of Title 49 United States Code (U.S.C.) § 47107(a) and the respective FAA Grant Assurance 22, *Economic Nondiscrimination*. The Complainant also alleges the Respondent has violated 49 U.S.C. § 40103(e) and the respective FAA Grant Assurance 23, *Exclusive Right*.

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 currently in violation of its Federal obligations. The FAA's decision in this matter is based on applicable federal law and FAA policy, review of the pleadings and supporting documentation submitted by the parties, reviewed by the FAA, which comprises the administrative record reflected in the attached FAA Exhibit 1.

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<sup>1</sup> Enforcement procedures regarding airport compliance matters may be found at *FAA Rules of Practice for Federally Assisted Airport Enforcement Proceedings* (14 CFR Part 16). These enforcement procedures were published in the Federal Register (61 FR 53998, October 16, 1996) and became effective on December 16, 1996.

## II. THE PARTIES

### Airport

The Springfield-Beckley Municipal Airport (SGH or KSGH)<sup>2</sup> is a public-use airport owned and operated by the City of Springfield, Ohio. The Airport, located five nautical miles south of Springfield, is classified as a general aviation airport. [FAA Exhibit 1, Item 7] SGH has 46 based aircraft and 21,183 annual operations. [FAA Exhibit 1, Item 7] The airport has two runways and an air traffic control tower. [FAA Exhibit 1, Item 7] 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 U.S.C. § 47101, *et seq.* Since 1982, \$8,172,316 in Federal AIP grants has been invested at SGH. [FAA Exhibit 1, Item 6]

### Complainant

Springfield Flight Academy (SFA or Complainant) is a corporation located at 1251 West Blee Road, Springfield, Ohio. [FAA Exhibit 1, Item, 1, ¶1] SFA offers flight training services. [FAA Exhibit 1, Item 8] The Record is unclear as to when SFA began operating at the Airport, and offers very little information regarding the corporation. SFA's website states the corporation has served the Springfield, Ohio community since 2000, but the Respondent states that SFA began operating out of a maintenance hangar at the Airport in 2006. [FAA Exhibit 1, Item 8<sup>3</sup> and FAA Exhibit 1, Item 3, Attach. I, p. 2] The Complainant's letter to the FAA's Detroit Airports District Office dated December 15, 2008 states the corporation began providing flight training and aircraft rental services on June 1, 2006. [FAA Exhibit 1, Item 3, exhibit I, sub exh. 1] On February 1, 2008, the Respondent and the Complainant entered into a general fixed base operator (FBO) lease agreement which permitted the Complainant to offer flight instruction, rental of aircraft related to providing flight instruction, hangar space rental, and airframe and power plant repair services.<sup>4</sup> [FAA Exhibit 1, Item 1, exhibit B, sub exh. 1]

## III. BACKGROUND and PROCEDURAL HISTORY

The Complainant fails to provide the necessary evidence to support its allegations. The Complaint states, "That a detailed time-line of events leading to the City's violation of 49 U.S.C. §§ 47107(a) and 40103(e), is attached hereto as Exhibit 'C'." [FAA Exhibit 1, Item 1, ¶6] However, the document described as Exhibit C provides only an synopsis of events and fails to include nearly all of the associated documentation referenced. In many cases, the Director is unclear as to how the events presented support the allegations contained in the Complaint or provide helpful context needed to understand what occurred. As a result, the Director relies on the body of evidence contained in the Record to develop this cursory background based on what appears to be the mutually acknowledged facts which are further substantiated by supporting evidence.

<sup>2</sup> SGH and KSGH are International Air Transport Association issued letters (IATA airport code) used to identify the Springfield-Beckley Municipal Airport. SGH hereafter refers to the airport.

<sup>3</sup> The website described as FAA Exhibit 1, Item 8 was accessible on October 18, 2010, but is no longer available.

<sup>4</sup> A fixed-base operator (FBO) is a commercial entity providing multiple aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public. [FAA Order 5190.6B, Appendix Z]

### Factual Background

The Airport's general FBO, Sunbird Air Services, Inc., began to experience financial difficulties in 2006. [FAA Exhibit 1, Item 3, Attach. I, p. 1] Sunbird Air Services dispensed aviation fuels from a fuel tank farm owned by the Respondent. [FAA Exhibit 1, Item 3, Attach. I, p. 1] On June 4, 2007, the Respondent and Sunbird Air Services enter into a temporary airport services agreement for the provision of temporary airport support services on a month-to-month basis. [FAA Exhibit 1, Item 3, Attach. I, p. 1 and FAA Exhibit 1, Item 3, exhibit B]

On September 14, 2007, the Respondent publishes a request for proposals (RFP) to solicit FBO services. [FAA Exhibit 1, Item 3, Attach. I, p. 3] The RFP's Scope of Proposals states:

*The City of Springfield is soliciting proposals from qualified parties for the management and operation of an FBO at the Airport, under a Lease and Operating Agreement. The successful Proposer must be willing to assume full responsibility for the operations of the leased area. All uses must be aviation related. Any proposal shall provide for the sale of aviation fuel, operation of a pilot's lounge, aircraft maintenance, management of the FBO office (i.e., responding to radio communications, working with customers) and include, at a minimum the requirements stated in the Fixed Base Operator Airport Services Agreement. [FAA Exhibit 1, Item 3, exhibit C, p. 1]*

Although the Complainant receives a copy of the RFP, it does not submit a proposal in response.<sup>5</sup> [FAA Exhibit 1, Item 3, Attach. I, p. 3 and FAA Exhibit 1, Item 1, exhibit C, p. 4] No proposals were submitted in response to the Respondent's RFP. [FAA Exhibit 1, Item 3, Attach. I, p. 3]

In November of 2007, the Respondent contacts the Complainant to discuss if SFA is willing to perform the complete complement of flight line services and fueling dispensing services using the Respondent's fuel tank farm. [FAA Exhibit 1, Item 3, Attach. I, p. 3] The Complainant expresses interest in providing airframe and power plant repair services.<sup>6</sup> [FAA Exhibit 1, Item 3, Attach. I, p. 4]

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<sup>5</sup> The Record contains conflicting statements about the Complainant's reaction to the RFP. The Complainant's informal complaint to the Detroit Airports District Office states, "The bid process was difficult to read, allocated only 6 weeks to complete the application, and required an investment upwards of \$300,000 by bidders if awarded. Given the airports [sic] history of not attracting much business to ensure adequate returns on such an investment and the limited listing of the open bid to the City's website only, it failed to attract much attention. However, as the airport's only remaining General FBO, Springfield Flight Academy began the process, but could not complete the bid in the time allotted." [FAA Exhibit 1, Item 3, exhibit I, sub exh. 1, pp 1-2] The Complainant's Documentation and Timeline states, "SFA did not submit a proposal to the RFP. It was an unreasonable deal, and we believe purposely so." [FAA Exhibit 1, Item 1, exhibit C, p. 4]

<sup>6</sup> The Record is unclear with regard to the Complainant's response or interest in performing the complete complement of flight line services and fueling dispensing services using the Respondent's fuel tank farm. The Respondent states, "SFA was not interested in providing the fueling services since it did not have sufficient capital for startup costs." [FAA Exhibit 1, Item 3, Attach. I, p. 4] However, the Complainant states it submitted a document outlining how SFA would provide fueling services. [FAA Exhibit 1, Item 1, exhibit C, p. 4] The Record does not include a copy of the Complainant's proposal with regard to fueling services.

On November 21, 2007, the Respondent contacts S Jet<sup>7</sup> to discuss its willingness to perform the complete complement of flight line services and fueling dispensing services using the Respondent's fuel tank farm. [FAA Exhibit 1, Item 3, Attach. I, p. 4] S Jet expresses interest in providing the flight line services and fuel dispensing. [FAA Exhibit 1, Item 3, Attach. I, p. 4] However, S Jet does not wish to provide light aircraft maintenance at that time. [FAA Exhibit 1, Item 3, Attach. I, p. 4]

In December of 2007, the Complainant submits a proposal to provide maintenance operations and fueling services and to operate the terminal building.<sup>8</sup> [FAA Exhibit 1, Item 1, exhibit C, p. 4]

On February 1, 2008 the Respondent and the Complainant enter into a general FBO lease agreement which permits the Complainant to offer flight instruction, rental of aircraft related to providing flight instruction, hangar space rental, and airframe and power plant repair services. [FAA Exhibit 1, Item 1, exhibit B, sub exh. 1; FAA Exhibit 1, Item 1, exhibit C, p. 4; and FAA Exhibit 1, Item 3, Attach. I, p. 4]

On April 23, 2008, the Respondent and S Jet execute an addendum to S Jet's lease and specialty fixed base operator agreement. [FAA Exhibit 1, Item 3, Attach. I, p. 4 and FAA Exhibit 1, Item 3, exhibit E, sub exh. 1] This addendum permits S Jet to provide the complete complement of flight line services and to dispense fuel from the Respondent's fuel tank farm on a month-to-month basis. [FAA Exhibit 1, Item 3, Attach. I, p. 4 and FAA Exhibit 1, Item 3, exhibit E, sub exh. 1] Sunbird Air Services, Inc. ceases all commercial aeronautical activities at SGH. [FAA Exhibit 1, Item 3, Attach. I, p. 5]

On May 14, 2008, the Complainant requests to sell fuel to its customers.<sup>9</sup> [FAA Exhibit 1, Item 1, exhibit C, p. 5 and FAA Exhibit 1, Item 3, Attach. I, p. 5]

On July 7, 2008 the Respondent and S Jet execute an addendum to S Jet's lease and specialty fixed base operator agreement. [FAA Exhibit 1, Item 3, Attach. I, p. 4 and FAA Exhibit 1, Item 3, exhibit E, sub exh. 2]

On October 1, 2008, the State of Ohio's Department of Taxation awards the Complainant a Motor Fuel Dealer's License. [FAA Exhibit 1, Item 1, exhibit E]

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<sup>7</sup> S Jet, LLC entered into a subcontract with Spectra Jet, Inc., on November 24, 2009. This agreement states that 69.7% of S Jet's membership interest holds 100% of the stock of Spectra Jet. [FAA Exhibit 1, Item 3, exhibit E, sub exh. 3]

<sup>8</sup> The Complainant does not explain how this request was made or details associated with the request. The Respondent's filings do not reference this request.

<sup>9</sup> FAA Exhibit 1, Item 3, exhibit G is a letter from Premier Aviation Services/Springfield Flight Academy to the Respondent dated May 14, 2008. In this letter, Premier Aviation Services/Springfield Flight Academy requests permission to sell fuel to its customers. Business filings recorded with the Ohio Secretary of State (FAA Exhibit 1, Items 8 and 9) note the same agent and address for Springfield Flight Academy, LLC, and Premier Aviation Services, LLC. The Record states, "The principles of the Springfield Flight Academy will be operating as Premier Aviation Services, LLC at the Springfield-Beckley Municipal Airport. To provide qualified and properly licensed/certified airframe and power plant repair and maintenance technicians and perform repair and maintenance services for general aviation aircraft." [FAA Exhibit 1, Item 3, exhibit G, sub exh. 1, p. 1]

On October 24, 2008 the Respondent sends a letter to the Complainant rejecting its proposal to sell fuel. [FAA Exhibit 1, Item 3, exhibit H] The letter states:

*"I do not believe it is in the best interest of the Springfield airport [sic] to have two separate individuals providing fueling services, and therefore must deny your request to sell fuel."* [FAA Exhibit 1, Item 3, exhibit H]

On December 15, 2008, the Complainant files an informal complaint with the FAA's Detroit Airports District Office alleging violations of Grant Assurance 22, *Economic Nondiscrimination* and Grant Assurance 23, *Exclusive Rights*. [FAA Exhibit 1, Item 3, exhibit I, sub exh. 1] The letter states:

*"It is our opinion that the contract was not awarded in a fair and competitive spirit, and that the city deliberately overlooked proposals by the Springfield Flight Academy and the wishes of the community's airport users."* [FAA Exhibit 1, Item 3, exhibit I, sub exh. 1, p.1]

On February 24, 2009, the FAA's Detroit Airports District Office advises the Respondent of the informal complaint and asks the City to respond to the allegations. [FAA Exhibit 1, Item 3, exhibit I]

On April 3, 2009, the Respondent sends a letter to the Complainant regarding SFA's expired lease agreement. [FAA Exhibit 1, Item 1, exhibit C, p. 9; FAA Exhibit 1, Item 3, Attach. I, p. 6; and FAA Exhibit 1, Item 3, exhibit J] The Respondent asks the Complainant to provide a list of services it seeks to provide at the airport. [FAA Exhibit 1, Item 3, exhibit J]

On April 9, 2009, the Complainant responds. [FAA Exhibit 1, Item 1, exhibit C, p. 9, FAA Exhibit 1, Item 3, Attach. I, p. 6; and FAA Exhibit 1, Item 3, exhibit K] The Complainant includes two enclosures which discuss: current services offered by the Complainant; services scheduled to begin in the summer of 2009; projected services for 2010; projected services for 2011 and beyond; and the support required by the Respondent for the Complainant's business plans. [FAA Exhibit 1, Item 3, exhibit K, sub exh. 1 and FAA Exhibit 1, Item 3, exhibit L]

On April 13, 2009, the Respondent responds to the FAA's Detroit Airports District Office letter dated February 24, 2009. [FAA Exhibit 1, Item 3, Attach. I, p. 7; and FAA Exhibit 1, Item 3, exhibit L] This letter explains that the Respondent is continuing to discuss many of the Complainant's concerns directly with the Complainant and references the City's April 3, 2009 letter to SFA. [FAA Exhibit 1, Item 3, exhibit L, p. 4]

On May 5, 2009, the Complainant sends an e-mail to the City's Deputy Economic Development Director regarding the potential for automotive gasoline (MoGas) sales at the Airport.<sup>10</sup> [FAA

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<sup>10</sup> Automotive gasoline or MoGas may be used in aircraft covered by Supplemental Type Certificates for this fuel. [See FAA Advisory Circular 91-33A, *Use of Alternate Grades of Aviation Gasoline for Grade 80/87, and Use of Automotive Gasoline*]

Exhibit 1, Item 1, exhibit C, p. 10; FAA Exhibit 1, Item 3, Attach. I, p. 7; and FAA Exhibit 1, Item 3, exhibit M]

On June 9, 2009, the parties meet to review SFA's expired lease and discuss the additional aeronautical services proposed by SFA. [FAA Exhibit 1, Item 1, exhibit C, p. 10 and FAA Exhibit 1, Item 3, Attach. I, p. 7] The parties discuss the light aircraft maintenance services offered by the Complainant; the Complainant's request to sell MoGas; and tenant rents. [FAA Exhibit 1, Item 3, Attach. I, p. 8]

On June 23, 2009, the FAA's Detroit Airports District Office conducts a teleconference with the two parties. [FAA Exhibit 1, Item 1, exhibit C, p. 11; FAA Exhibit 1, Item 3, Attach. I, p. 8; and FAA Exhibit 1, Item 3, exhibit P] The Respondent provides additional information requested by the FAA's Detroit Airports District Office on June 30, 2009. [FAA Exhibit 1, Item 3, Attach. I, p. 8 and FAA Exhibit 1, Item 3, exhibit Q]

On June 26, 2009, the Complainant requests permission to sell fuel.<sup>11</sup> [FAA Exhibit 1, Item 1, exhibit C, p. 11]

On August 13, 2009, the FAA's Detroit Airports District Office conducts a teleconference with the two parties. [FAA Exhibit 1, Item 3, Attach. I, p. 8; and FAA Exhibit 1, Item 3, exhibit R]

On August 24, 2009, the FAA's Detroit Airports District Office conducts a teleconference with the two parties. [FAA Exhibit 1, Item 3, Attach. I, p. 9; and FAA Exhibit 1, Item 3, exhibit S] In preparation for this discussion, the Respondent provides the Complainant with two different options for selling fuel. [FAA Exhibit 1, Item 3, Attach. I, p. 9; and FAA Exhibit 1, Item 3, exhibit T]

On September 16, 2009, the representatives from the parties and S Jet meet to discuss fueling options. [FAA Exhibit 1, Item 1, exhibit C, p. 11 and FAA Exhibit 1, Item 3, Attach. I, p. 9] Following this meeting, the Complainant makes arrangements to bring a fueling truck to the Airport. [FAA Exhibit 1, Item 1, exhibit C, p. 11]

On October 28, 2009, the Complainant sends a letter to the Respondent objecting to how the City applied its ordinances with regard to fueling operations at the Airport and alleging grant assurance violations. [FAA Exhibit 1, Item 1, exhibit C, p. 12; FAA Exhibit 1, Item 3, Attach. I, p. 10; and FAA Exhibit 1, Item 3, exhibit U] The Respondent responds to this letter on November 9, 2009. [FAA Exhibit 1, Item 1, exhibit C, p. 12; FAA Exhibit 1, Item 3, Attach. I, p. 10; and FAA Exhibit 1, Item 3, exhibit V]

On November 16, 2009, the FAA's Detroit Airports District Office conducts a meeting with the two parties. [FAA Exhibit 1, Item 3, Attach. I, p. 10; and FAA Exhibit 1, Item 3, exhibit W] After this meeting, S Jet sends a proposal titled, "Agreement to Purchase 100LL Fuel" to the Complainant; the Complainant provides a copy of its edits to this proposal to the Respondent on

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<sup>11</sup> The Complainant does not explain how this request was made or details associated with the request. The Respondent's filings do not reference this request.

December 10, 2009. [FAA Exhibit 1, Item 3, Attach. I, p. 10; and FAA Exhibit 1, Item 3, exhibit X]

On January 11, 2010, the Respondent sends the Complainant a letter reminding SFA of the Airport's minimum standards and application requirements for charter aircraft operations. [FAA Exhibit 1, Item 3, Attach. I, p. 10; and FAA Exhibit 1, Item 3, exhibit Y]

On January 18, 2010, Spectra Jet sends the Complainant a letter in response to SFA's proposed edits to the "Agreement to Purchase 100LL Fuel" document. [FAA Exhibit 1, Item 3, Attach. I, p. 11; and FAA Exhibit 1, Item 3, exhibit Z] This letter states:

*"Since receiving your reply to the Agreement we have consulted with our legal counsel. He advises that the city ordinance, Chapter 959, states only the General FBO can dispense fuel, and in so doing, S Jet retains liability for all fueling regardless of who actually dispenses the fuel. Therefore, in light of the above we find it impossible to enter into any agreement prohibited by real concerns over liability."* [FAA Exhibit 1, Item 3, exhibit Z, p. 1]

On January 27, 2010 the parties meet to discuss the sale of fuel to the public under the Airport's Minimum Standards. The Respondent reminds the Complainant that SFA is not qualified to dispense fuel and that their lease arrangement does not provide for sale of fuel to the public. [FAA Exhibit 1, Item 3, Attach. I, p. 11]

On March 5, 2010, the parties meet to discuss the Complainant's application to perform charter services at the Airport. [FAA Exhibit 1, Item 3, Attach. I, p. 11] The Respondent advises the Complainant that its application lacks the required financial statements. [FAA Exhibit 1, Item 3, Attach. I, p. 11]

On April 21, 2010, the parties meet. [FAA Exhibit 1, Item 3, Attach. I, p. 11] The Respondent reminds the Complainant that SFA is not qualified to dispense fuel and that their lease arrangement does not provide for sale of fuel to the public. [FAA Exhibit 1, Item 3, Attach. I, p. 11]

On June 4, 2010, the parties meet. [FAA Exhibit 1, Item 3, Attach. I, p. 11] The Respondent reminds the Complainant that SFA is not qualified to dispense fuel and that their lease arrangement does not provide for sale of fuel to the public. [FAA Exhibit 1, Item 3, Attach. I, p. 11]

On June 22, the Complainant sends the Respondent an e-mail stating:

*Our 100LL fuel truck has returned to the airfield. As no other viable solution has been presented, at this time we will be trucking in fuel for our operations. In addition, after discussions with legal advise (sic), our customer base, and deliberation between the principle management staff, we have decided to offer this fuel for sale.* [FAA Exhibit 1, Item 3, exhibit AA, p. 1]

On July 23, 2010, the Respondent sends the Complainant a certified letter instructing SFA to stop selling fuel to the public. [FAA Exhibit 1, Item 3, Attach. I, p. 11; and FAA Exhibit 1, Item 3, exhibit BB] This letter states:

*"If you fail to comply with the instructions contained in this letter, it will be necessary for the City of Springfield to terminate your tenancy. Once your tenancy at the Springfield-Beckley Municipal Airport has been terminated, Springfield Flight Academy will no longer be permitted to perform fixed base operator services at the Springfield-Beckley Municipal Airport."* [FAA Exhibit 1, Item 3, exhibit BB, p. 1]

On August 10, 2010, the Complainant's counsel sends a letter to the Respondent proposing a teleconference to discuss the complaint. [FAA Exhibit 1, Item 1, exhibit A]

On August 11, 2010, the Respondent sends the Complainant a certified letter terminating its tenancy at Maintenance Hangar #1. [FAA Exhibit 1, Item 3, Attach. I, p. 11; and FAA Exhibit 1, Item 3, exhibit CC] The Respondent demands the Complainant vacate Maintenance Hangar #1 and cease its FBO functions on or before October 1, 2010. [FAA Exhibit 1, Item 3, exhibit CC]

On September 7, 2010 the Complainant's counsel sends a letter to the Respondent proposing modifications to the terms of the Complainant's current lease. [FAA Exhibit 1, Item 1, exhibit A, sub exh. 1] In response, the Respondent sends a letter to the Complainant's counsel on September 15, 2010, stating that the parties remain at an impasse and the eviction notice remains in effect. [FAA Exhibit 1, Item 1, exhibit A, sub exh. 2, p. 1]

On September 16, 2010, the Complainant's counsel sends an e-mail to the Respondent requesting the City extend SFA's lease for one year or month-to-month pending the outcome of the FAA's Part 16 proceeding and/or state action by local counsel. [FAA Exhibit 1, Item 1, exhibit A, sub exh. 5, p. 1] On September 22, 2010, the Respondent attempts to contact the Complainant's counsel by telephone and sends an e-mail advising that SFA's tenancy will be terminated. [FAA Exhibit 1, Item 1, exhibit A, sub exh. 4, p. 1]

On September 23, 2010, the Complainant's counsel sends an e-mail to the Respondent stating that a formal complaint will be filed with the FAA. [FAA Exhibit 1, Item 1, exhibit A, sub exh. 4, p. 1]

### **Procedural History**

On October 14, 2010, the FAA received the Complaint. [FAA Exhibit 1, Item 1]

On October 18, 2010, the FAA docketed Springfield Flight Academy v. City of Springfield. [FAA Exhibit 1, Item 2]

On November 8, 2010, the Respondent filed an Answer and Response to the Complaint. [FAA Exhibit 1, Item 3]

On November 19, 2010, the Complainant filed its Reply. [FAA Exhibit 1, Item 4]

On November 29, 2010, the Respondent filed a Rebuttal. [FAA Exhibit 1, Item 5]

On March 29, 2011, the FAA extended the due date of the Director's Determination to on or before June 30, 2011. [FAA Exhibit 1, Item 14]

On June 29, 2011, the FAA extended the due date of the Director's Determination to on or before August 31, 2011. [FAA Exhibit 1, Item 14]

#### **IV. ISSUES**

Upon review of the allegations and the relevant airport-specific circumstances summarized above, the FAA has determined that the following issues require analysis to provide a complete review of the Respondent's compliance with applicable federal law and policy:

- Whether the Respondent failed to make the Springfield-Beckley Airport available to the Complainant on reasonable terms and without unjust discrimination in violation of 49 U.S.C. § 47107(a)(1) and Grant Assurance 22, *Economic Nondiscrimination*.
- Whether the Respondent limited the Complainant's ability to self-serve its aircraft in violation of Grant Assurance 22, *Economic Nondiscrimination*.
- Whether the Respondent limited the right to sell fuel to a single provider in violation of 49 U.S.C. § 40103(e) and Grant Assurance 23, *Exclusive Rights*.

#### **V. APPLICABLE FEDERAL LAW AND FAA POLICY**

The following is a discussion pertaining to the FAA's enforcement responsibilities; the FAA compliance program; statutes, sponsor assurances, and relevant policies; and the complaint process.

##### ***FAA Enforcement Responsibilities***

The Federal Aviation Act of 1958, as amended, 49 U.S.C. § 40101, et seq., assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. The federal role in encouraging and developing civil aviation has been augmented by various legislative actions, which authorize programs for providing funds and other assistance to local communities for the development of airport facilities. In each 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. Commitments assumed by airport sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation, and maintenance, as well as ensuring the public reasonable access to the

airport. The FAA has a statutory mandate to ensure that airport owners comply with their grant assurances.<sup>12</sup>

### ***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 interest in civil aviation. The Airport Compliance Program does not control or direct the operation of airports. Rather, it monitors the administration of valuable rights, which airport sponsors pledge to the people of the United States in exchange for monetary grants and donations of federal property, to ensure that airport sponsors serve the public interest.

FAA Order 5190.6B, *FAA Airport Compliance Manual*, September 30, 2009, (hereinafter 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. It 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 the grant of federal funds or the conveyance of 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 interpretation of the assurances by FAA personnel.

The FAA compliance program is designed to achieve voluntary compliance with federal obligations accepted by owners and/or operators of public-use airports developed with FAA administered assistance. Therefore, 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. Consequently, the FAA will consider the successful action by the airport to cure any alleged or potential past violation of applicable federal obligation to be grounds for dismissal of such allegations. [See e.g. Wilson Air Center v. Memphis and Shelby County Airport Authority, FAA Docket No. 16-99-10, (August 2, 2000) (Director's Determination) (Wilson DD); *aff'd*, Wilson Air Center v. Memphis and Shelby County Airport Authority, FAA Docket No. 16-99-10, (August 30, 2001) (Final Decision and Order) (Wilson FAD).]

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<sup>12</sup> See, 49 U.S.C. §§ 40101, 40103(c), 40113, 40114, 46101, 46104, 46105, 46106, 46110, 47104, 47105(d), 47106(d), 47106(e), and 47122.

### ***Statutes, Sponsor Assurances, and Relevant Policies***

As a condition precedent to providing airport development assistance under the Airport and Airway Improvement Act of 1982 (AAIA), codified at Title 49 U.S.C. § 47101, et seq., the Secretary of Transportation receives certain assurances from the airport sponsor.

The AAIA, 49 U.S.C. § 47101, 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. These sponsorship requirements are included in every airport improvement program (AIP) grant agreement. Upon acceptance of an AIP grant by an airport sponsor, the assurances become a binding obligation between the airport sponsor and the federal government.

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

#### ***Grant Assurance 22, Economic Nondiscrimination***

Grant Assurance 22, *Economic Nondiscrimination*, (Assurance 22) implements the provisions of 49 U.S.C. § 47107(a)(1) through (6), and requires, in pertinent part:

[The airport owner or sponsor] will make the airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport. [Assurance 22(a).]

In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to (1) furnish said services on a reasonable, and not unjustly discriminatory basis to all users thereof, and (2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. [Assurance 22(b).]

Each fixed-base operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-base operators making the same or similar uses of such airport and using the same or similar facilities. [Assurance 22(c).]

Each air carrier using such airport shall have the right to service itself or to use any fixed-base operator that is authorized or permitted by the airport to serve any air carrier at such airport. [Assurance 22(d).]

Each air carrier using such airport shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to

providing air transportation as are applicable to all such air carriers that make similar use of such airport and use similar facilities, subject to reasonable classifications such as tenants or nontenants and signatory carriers and nonsignatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status. [Assurance 22 (e).]

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

In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions. [Assurance 22 (g).]

[The owner or sponsor] may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport. [Assurance 22(h).]

...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.” [Assurance 22(i).]

Subsection (h) qualifies subsection (a), and subsection (i) represents an exception to subsection (a) to permit the owner or 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.

### ***Grant Assurance 23, Exclusive Rights***

Grant Assurance 23, *Exclusive Rights*, (Assurance 23) implements the provisions of 49 U.S.C. §§ 40103(e) and 47107(a)(4), and requires, in pertinent part, that the owner or 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.

...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...

...will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49 United States Code.

In FAA Order 5190.6B, *FAA Airport Compliance Manual*, the FAA discusses its exclusive rights policy and broadly identifies aeronautical activities as subject to the statutory prohibition against exclusive rights. While public-use airports may impose qualifications and minimum standards upon those who engage in aeronautical activities, 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. 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).] An owner or sponsor is under no obligation, however, 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, Par.11.2.]

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

FAA Order 5190.6B provides additional guidance on the application of the statutory prohibition against exclusive rights and FAA policy regarding exclusive rights at public-use airports. [See Order, Chapter 8.]

### ***The Complaint Process***

Pursuant to 14 CFR § 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 §§ 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 it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance. [14 CFR § 16.29.]

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 U.S.C. § 556(d).] [See also, *Director, Office of Workers’ Compensation Programs, Department of Labor v. Greenwich Collieries*, 512 U.S. 267, 272 (1994); *Air Canada et al. v. Department of Transportation*, 148 F.3d 1142, 1155 (D.C. 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

In a Part 16 proceeding, the complainant has an obligation to compile and submit all necessary information to support and document its allegations to the Director. This is important for two reasons. First, under Part 16, the burden of proof falls upon the complainant to establish and substantiate each allegation made. [See 14 CFR §16.29(b)(1)] Secondly, a review by the Associate Administrator is limited to an examination of the Director’s Determination and the Administrative Record upon which such determination is based. [See 14 CFR §16.241(c)] Therefore, a complainant’s failure to raise all issues and allegations in the original complaint documents may be cause for such issues and allegations to be deemed waived and not reviewable upon appeal. [See, Rick Aviation, Inc. v. Peninsula Airport Commission, FAA Docket No. 16-05-18, (November 6, 2007) (Final Decision and Order) at 8 (Rick Aviation FAD)]

The Part 16 process was established to provide an expedited FAA review and initial agency determination for questions associated with an airport sponsor’s compliance with its Federal obligations as embodied in its Federal grant agreements; it is not an ongoing review process. As such, the FAA will not entertain appeals based solely on information previously withheld from the Director. This practice is burdensome to respondents and the agency.

The Complainant states that the Respondent has been in violation of its Federal Grant Assurances since March 11, 2008. [FAA Exhibit 1, Item 1, ¶20] However, neither the six-page Complaint, nor the 11 accompanying exhibits, offers a substantial chronological history to explain the nature of the Complainant’s relationship with the Respondent and how the alleged violations occurred. The Complaint incorporates the “facts set in forth in the Exhibit ‘C’ timeline (sic)”. [FAA Exhibit 1, Item 1, ¶7] But this synopsis lacks specific details and fails to include nearly all of the associated documentation it references. Additionally, the Complaint offers no reference to Part 16 precedent. This makes it difficult for the Director to decipher what occurred and how those events may support the allegations contained in the Complaint. As a result, the Director relies on the body of evidence contained in the Record, much of which has been provided by the Respondent, as the context to establish what appear to be the mutually acknowledged facts.

To facilitate the Director’s analysis of the Complaint, the allegations have been grouped into three issues for discussion. These issues reflect the substance of the allegations broadly presented by the Complainant throughout the Record as a whole and review many of the same issues raised by the Complainant to the FAA’s Detroit Airports District Office. The principal matter to be determined by the Director is whether or not the airport sponsor is in compliance with its Federal obligations as embodied in its Federal grant agreements.

### **Issue (1)**

Whether the Respondent failed to make the Springfield-Beckley Airport available to the Complainant on reasonable terms and without unjust discrimination in violation of 49 U.S.C. § 47107(a)(1) and Grant Assurance 22, *Economic Nondiscrimination*.

The Complainant raises numerous arguments related to Grant Assurance 22, *Economic Nondiscrimination*. The Director has grouped these allegations into three general categories: whether the Respondent's Minimum Standards were reasonable, whether the Respondent unjustly discriminated against the Complainant in favor of S Jet, and whether other actions taken by the Respondent were reasonable. Each category is discussed below.

#### **Whether the Respondent's Minimum Standards Were Reasonable**

The FAA encourages airport management, as a matter of prudence, to establish minimum standards to be met by all who would engage in a commercial aeronautical activity at an airport. It is the prerogative of the airport owner or sponsor to impose conditions on users of an airport to ensure its safe and efficient operation. Such conditions must be fair, equal, and not unjustly discriminatory. They must be relevant to the proposed activity, reasonably attainable, and uniformly applied. Once the airport sponsor has established minimum standards, it should apply them objectively and uniformly to all similarly situated on-airport aeronautical activities and services. [See FAA Advisory Circular, 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities*, Section 1.1.; Flightline v. Shreveport, FAA Docket No. 16-07-05 (March 7, 2008) (Director's Determination) at 26]

The establishment of minimum standards is the FAA's recommended way for a sponsor to deal with the inherent friction among competing aeronautical service providers and a variety of airport users. But, it is through the sponsor's objective and uniform application of its minimum standards that allows it to meet the standard of compliance. The FAA expects airport sponsors to apply their minimum standards consistently through their interactions with aeronautical users and service providers. With that said, the standard of compliance does not require that airport sponsors enforce minimum standards so rigidly as to require identical tone and posture toward all airport users that have different records and history with the sponsor. [See Rick Aviation, Inc. v. Peninsula Airport Commission, FAA Docket No. 16-05-18, (May 8, 2007) (Director's Determination) at 16 (Rick Aviation DD), *aff'd* Rick Aviation, Inc. v. Peninsula Airport Commission, FAA Docket No. 16-05-18, (November 6, 2007) (Final Decision and Order) at 9]

When evaluating an airport sponsor's minimum standards:

“the FAA does not judge an airport sponsor simply by the plain language of agreements or minimum standards, since such documents are rarely so perfectly crafted as to avoid all possibilities for inconsistency over time, changing circumstances and interpretations. Rather, the FAA judges compliance by an airport sponsor's actions or inactions with respect to those agreements or minimum standards.” [See Self Serve Pumps, Inc. v Chicago Executive Airport, FAA Docket No. 16-07-02, (March 17, 2008) (Director's Determination) at 31-32 (Self Serve Pumps)]

The Complainant alleges a violation of:

*“Federal Airport Assurance 22(h) relating to the City’s unjust discrimination practices and conditions imposed upon Springfield Flight Academy, that were not imposed on other operators at KSGH.” [FAA Exhibit 1, Item 1, ¶24]*

The Complainant states:

*“That the City, in a discriminatory fashion, is trying to enforce its minimum standards on SFA, but does not do the same with S-Jet on the field, as S-Jet does not provide two aviation services as is required, and does not have a 1000 gallon fuel truck as is required by the minimum standards.” [FAA Exhibit 1, Item 1, ¶14]*

*“That under the City’s minimum standards, SFA is required to construct two metered filter-equipped fuel storage tanks at prohibitive expense to SFA, (see City’s Minimum Standards, paragraph 959.12(d) (5), attached hereto as Exhibit “D”), while S-Jet has exclusive use of the city owned tanks with no expense at all, and without having to comply with the minimum standards.” [FAA Exhibit 1, Item 1, ¶17]*

The Respondent denies these allegations. [FAA Exhibit 1, Item 3, ¶2 and ¶4] The Respondent states:

*“S-Jet, LLC is a general fixed base operator<sup>13</sup> at KSGH who performs multiple commercial aeronautical activity services at KSGH, including airframe and powerplant repair services, aircraft accessories, installation and repair services, fuel dispensing services and a full complement of flight line services. These services provided by S-Jet, LLC are provided under the terms, conditions and limitations contained in the Lease and Specialty Fixed Base Operator Agreement between S-Jet, LLC and Respondent dated December 20, 2006. S-Jet, LLC became a general fixed base operator when it began dispensing fuel pursuant to the Addendum made a part of the said Lease and Specialty Fixed Base Operator Agreement.” [FAA Exhibit 1, Item 5, ¶1]*

The Complainant offers no evidence to support its allegation that S Jet is not offering the services outlined above. Therefore, the Director will disregard this claim.

Both parties agree that the Respondent leased its fuel tank farm to S Jet. [FAA Exhibit 1, Item 1, exhibit C, p. 5 and FAA Exhibit 1, Item 3, ¶9] But the parties dispute whether or not S Jet has a

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<sup>13</sup> The Respondent’s Minimum Standards define a “General Fixed Base Operator” as “a person, firm or corporation subject to the provisions of a lease and a nonexclusive license engaging in:  
(1) three or more specialty commercial aeronautical activities; or  
(2) two or more specialty commercial aeronautical activities with fuel dispensing operations.” [FAA Exhibit 1, Item 1, exhibit D, pp 2- 3]

fuel truck. The Respondent states that after S Jet became a general FBO, S Jet leased a 1,200 gallon fueling truck for Jet-A and purchased a 300 gallon trailer for 100LL fueling. [FAA Exhibit 1, Item 3, Attach. I, pp 4-5] The Record is unclear as to why the Complainant claims S Jet does not have a 1,000 gallon fuel truck, and the Complainant provides no evidence to support this claim.

The Minimum Standards state:

*"If the GFBO [General Fixed Base Operator] proposes to provide fuel dispensing operations, the person shall provide as a minimum the following services and facilities in addition to the requirements of the SFBO [Specialty Fixed Base Operator] activities undertaken to obtain GFBO status:*

*(1) Land. The leasehold shall contain sufficient space to provide for buildings, aircraft parking area equipped with six tiedowns and aviation fueling equipment.*

*(2) Personnel. One properly trained person shall be on duty during operating hours.*

*(3) Aircraft service equipment. Shall comply with fueling precautions and procedures of the Municipal Airport.*

*(4) Flight line services. The following services shall be provided by the GFBO at a minimum:*

*A. Fuel, park, and tiedown of aircraft.*

*B. Wash aircraft.*

*C. Inflate tires.*

*D. Sell lubricating oil.*

*E. Sell fuel anti-ice fluid.*

*F. Provide transportation for aircraft occupants from parking ramp to office.*

*(5) Fueling facilities. Applicant shall construct or lease two metered filter-equipped fuel storage tanks for dispensing aviation gasoline and jet fuel on the Airport premises in areas designated by the Airport Layout Plan. The storage tanks shall have a minimum capacity of 8,000 gallons for aviation gasoline and 10,000 gallons for jet fuel. If mobile dispensing trucks are used, each truck shall have a minimum capacity of 1,000 gallons for gasoline and 1,000 gallons for jet fuel. Separate dispensing pumps and meters for each grade of fuel is required.*

*(6) Hours of operation. Fueling service shall be provided seven days per week, a minimum of twelve hours per day.*

*(7) Fuel commitment. Persons wanting to fuel aircraft shall demonstrate that they have a commitment from a fuel supplier to supply all fuel. Such commitment shall be in writing from the fuel supplier and shall specify the types and volumes of fuel available to the applicant.*

*(8) Fuels required. One of the following aviation gasoline grades shall be provided:*

*100/130 octane avgas*

*100 octane low-lead avgas (100 LL)*

*One of the following jet fuel grades shall be provided:*

*JP-4*

*JP-5*

*Jet-A*

*If fuels other than those required in this section are offered, then the requirements pertaining to tank capacity need not apply to these additional fuels.” [FAA Exhibit 1, Item 1, exhibit D, pp 10-11]*

The Director notes that the Minimum Standards are vague regarding the manner in which fuel must be dispensed because they discuss two methods: metering fuel from storage tanks and dispensing fuel from trucks. Reading the Minimum Standards, it is unclear as to what role the City-owned fuel tank farm plays with regard to the requirement. The Respondent may have allowed S Jet to depart from some of the requirements contained in the Minimum Standards because S Jet was permitted to dispense fuel directly from the City-owned fuel farm. [FAA Exhibit 1, Item 3, exhibit E, sub exh. 1, p. 3 and sub exh. 2, p. 3] While the Director does not condone a sponsor’s decision to deviate from its Minimum Standards, this alone is not a violation of the Federal Grant Assurances. In a Part 16 proceeding, it is not enough to establish that one party does not meet an airport’s minimum standards; a complainant must establish that the standard was unreasonable or unjustly discriminatory or applied in an unreasonable or unjustly discriminatory manner.

The Complainant does not allege the Minimum Standards are unreasonable, and the Record does not provide a preponderance of reliable, probative, and substantial evidence to establish that S Jet does not meet these Minimum Standards. However, the Director agrees that the Respondent’s application of its Minimum Standards warrants analysis. The Director must determine if the Respondent’s application of the Minimum Standards resulted in unjust discrimination. Therefore, the Director will weigh the progress and character of the negotiations and postures of both parties over time as presented by the record of evidence. This is discussed below.

#### **Whether the Respondent Unjustly Discriminated Against the Complainant in Favor of S Jet**

In Penobscot Air Service LTD v. County of Knox Board of Commissioners, FAA Docket No. 16-97-04, (September 25, 1997) (Record of Determination) at 22 (Penobscot ROD); *aff’d*, Penobscot Air Services, Ltd. v. FAA, 164 F.3d 713, 726 (1st Cir. 1999), the Director stated, “Assurance 22, Economic Nondiscrimination prohibits only unjust discrimination among users. Differences in treatment including rental rates, are permissible as long as those differences are not unjust.” As a result, the FAA has long held that in order to sustain a finding of unjust economic discrimination, a complainant must establish that it requested similar terms and conditions as other similarly situated airport users and was denied for unjust reasons. [See Aerodynamics of Reading, Inc. v. Reading Regional Airport Authority, FAA Docket No. 16-00-03, (December 22, 2000) (Director’s Determination) at 19 (Aerodynamics DD); *aff’d*, Aerodynamics of Reading, Inc. v. Reading Regional Airport Authority, FAA Docket No. 16-00-03, (July 23, 2001) (Final Decision and Order)]

The Complainant alleges:

*“That the City discriminated against Springfield Flight Academy by unreasonably, arbitrarily and capriciously enforcing its Rules and Regulations on SFA, but not on other similarly situated entities at KSGH.”* [FAA Exhibit 1, Item 1, ¶25]

As a result, the Complainant asserts:

*“That SFA is not allowed to access the City owned public fuel tanks.”* [FAA Exhibit 1, Item 1, ¶19]

The Complainant offers no explanation, analysis, or evidence to establish how it is similar to other operators or tenants at the Airport.

The Respondent denies these allegations, and answers, *“SFA was a substantially different kind of tenant as compared to the tenants...”* [FAA Exhibit 1, Item 3, ¶2 and ¶4 and FAA Exhibit 1, Item 3, Attach. I, p. 13] In support of its affirmative defense, the Respondent provides detailed information regarding other tenants at the Airport in FAA Exhibit 1, Item 3, Attach. I.

The Respondent also claims that the Complainant can access the City’s fuel farm. The Respondent states:

*“...the Respondent’s fuel tank farm has been leased to S Jet, LLC but that Complainant can purchase aviation fuel at the Respondent’s fuel tank farm at a discounted price.”* [FAA Exhibit 1, Item 3, ¶9]

The Director has thoroughly reviewed the information contained in the Record about the various tenants at the Airport and offers the following observations:

- Both the Complainant and S Jet initiated services at the Airport as specialty FBOs.<sup>14</sup> [FAA Exhibit 1, Item 3, Attach. I, p. 2 and FAA Exhibit 1, Item 3, exhibit E] The Complainant provided flight training and aircraft rental services. [FAA Exhibit 1, Item 3, Attach. I, p. 2] S Jet provided airframe and powerplant repair services; aircraft accessories; installation and repair services; and aircraft storage under a specialty FBO agreement. [FAA Exhibit 1, Item 3, exhibit E, p. 4]
- Both the Complainant and S Jet became general FBOs in 2008 through a non-RFP negotiated process discussed below.<sup>15</sup> [FAA Exhibit 1, Item 1, exhibit B, sub exh. 1 and FAA Exhibit 1, Item 3, exhibit E, sub exh. 1 and 2]

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<sup>14</sup> The Respondent’s Minimum Standards define a “Specialty Fixed Base Operator” as “a person, firm or corporation subject to the provisions of a lease and a nonexclusive license engaging in two or fewer specialty commercial aeronautical activities.” [FAA Exhibit 1, Item 1, exhibit D, p. 3]

<sup>15</sup> See Footnote 13.

- Although Sunbird Air Services had performed flight line and fuel dispensing services as a general FBO, they ceased doing business during the approximate timeframe that the Complainant and S Jet became general FBOs. [FAA Exhibit 1, Item 3, Attach. I, pp 1 and 5] While the Complainant and S Jet may have been similarly situated to Sunbird Air Services during a short transitional period, the Director finds any overlap to be de minimus and irrelevant given that Sunbird Air Services ceased doing business at the Airport during this time.
- The principals of the Complainant and S Jet both used different corporate entities for different components of its offerings. SFA's Vice President, Aaron T. Coleman, is listed as the agent for Springfield Flight Academy, LLC, Premier Aviation Services, LLC, and Mad River Air, LLC.<sup>16</sup> [FAA Exhibit 1, Item 3, exhibit K, p.1; FAA Exhibit 1, Item 9, p. 3; FAA Exhibit 1, Item 10, p. 3; and Exhibit 1, Item 11, p. 3] S Jet, LLC and Spectra Jet, Inc. entered into an agreement to sub-contract certain services on November 24, 2009. [FAA Exhibit 1, Item 3, exhibit E, sub exh. 3] This agreement notes that 100 percent of Spectra Jet is held by 69.7 percent of S Jet's members. [FAA Exhibit 1, Item 3, exhibit E, sub exh. 3]
- The Complainant and S Jet executed very different lease terms with the Respondent. [FAA Exhibit 1, Item 1, exhibit B, sub exh. 1 and FAA Exhibit 1, Item 3, exhibit E] The Complainant leased a maintenance hangar owned by the Respondent at a substantial discount compared to its previous tenant for a term of one-year. [FAA Exhibit 1, Item 1, exhibit B, sub exh. 1, p. 4 and FAA Exhibit 1, Item 3, Attach I, p. 2] S Jet's lease required it to construct a hangar, "*at least one hundred twenty feet (120') wide and at least one hundred fifty feet (150') long...*" and an asphalt ramp to connect its hangar to the adjacent apron. [FAA Exhibit 1, Item 3, exhibit E, pp 6-7] S Jet spent approximately \$1,428,819 to construct a 73,491 square foot hangar. [FAA Exhibit 1, Item 3, Attach. I, p. 12] S Jet's lease also permitted it to install up to two 12,000 gallon aboveground fuel tanks to fuel certain customers. [FAA Exhibit 1, Item 3, exhibit E, pp 6-7] S Jet and the Respondent entered into a 35-year lease with a basic rent equal to \$567.64 a month. [FAA Exhibit 1, Item 3, exhibit E, pp 2-3]
- The Record notes three other tenants with current leases at the Airport, but the Director does not believe they are similarly-situated to the Complainant or S Jet. Egairo Aviation Corp. is described as offering "*charter-like operations in transporting economically disadvantaged persons to medical facilities as a charitable service.*" [FAA Exhibit 1, Item 3, Attach. I, p. 12] Ali-Gator Air, LLC offers only two aeronautical services. [FAA Exhibit 1, Item 3, Attach. I, p. 12] SelectTech manufacturers modules to be installed in military aircraft. [FAA Exhibit 1, Item 3, Attach. I, p. 13]

The fact that the Complainant and S Jet share some similarities does not necessarily make the two companies similarly situated for the purposes of Grant Assurance 22. S Jet envisioned a

<sup>16</sup> Documents contained in the Record suggest that Premier Aviation Services, LLC was operating at the Airport. [FAA Exhibit 1, Item 3, exhibit G and FAA Exhibit 1, Item 3, exhibit I, sub exh. 1, p. 2] The Record does not explain if or how Mad River, LLC, was operating at the Airport.

long-term commitment at SGH and was willing to make a significant investment in its leasehold. The Complainant initiated a one-year lease and made no investment at the Airport. S Jet has maintained its status as a general FBO, but the Record indicates the Complainant has not. [FAA Exhibit 1, Item 3, Attach. I, p. 8; FAA Exhibit 1, Item 3, exh. K, sub exh. 1, p. 2; and FAA Exhibit 1, Item 3, exh. O] These are important distinctions, and the Respondent can take them into consideration during the course of negotiations. This does not create a prima facie violation of Grant Assurance 22. [See Penobscot Air Services LTD v. FAA, 164 F. 3d 713, 726 (1st Cir., 1999); Aerodynamics of Reading, Inc. v. Reading Regional Airport Authority, FAA Docket No. 16-00-03, (Final Decision and Order), (July 23, 2001) at 17 (Aerodynamics FAD); Wilson FAD at 17; and Rick Aviation DD at 28]

### ***Request for Proposals***

The Record explains that prior to March of 2008<sup>17</sup>, the Respondent leased the City-owned fuel tank farm to Sunbird Air Services, the general FBO performing flight line services.<sup>18</sup> [FAA Exhibit 1, Item 3, Attach. I, p. 1] When the Respondent realized that Sunbird Air Services was in financial distress, it attempted to identify a qualified general FBO by requesting proposals (an RFP solicitation). [FAA Exhibit 1, Item 1, exhibit C, pp 1 & 4 and FAA Exhibit 1, Item 3, Attach. I, p. 3] This is a common business practice used to evaluate various business proposals through an equitable and competitive process.

The RFP clearly states that the successful proposer's responsibilities will be in accordance with the Airport's Minimum Standards as outlined in the lease and operating agreement attached to the RFP. [FAA Exhibit 1, Item 3, exhibit C, p. 7] Section 2 of the lease and operating agreement implies the FBO could have access to the City-owned fuel tank farm. [FAA Exhibit 1, Item 3, exhibit C, p. 11] Section 6 of the lease and operating agreement states the City of Springfield and the FBO will jointly establish the sale price for aviation fuel sold to the public, and if the parties cannot agree, the decision will be at the sole discretion of the City. [FAA Exhibit 1, Item 3, exhibit C, p. 11]

Although both the Complainant and S Jet receive a copy of the RFP, neither responds to it. [FAA Exhibit 1, Item 1, exhibit C, p. 4 and FAA Exhibit 1, Item 3, Attach. I, p. 3] In fact, no business responds to the RFP. [FAA Exhibit 1, Item 1, exhibit C, p. 4 and FAA Exhibit 1, Item 3, Attach. I, p. 3] Upon the close of the unsuccessful RFP process, the Respondent pursues an alternative method to ensure critical services remain available at the Airport. [FAA Exhibit 1, Item 1, exhibit C, p. 4 and FAA Exhibit 1, Item 3, Attach. I, p. 3]

### ***Complainant's First Proposal***

The Respondent contacts the Complainant in November of 2007 to discuss SFA's potential interest in performing flight line and fuel dispensing services using the Respondent's fuel tank farm. [FAA Exhibit 1, Item 3, Attach. I, p. 3] The parties dispute the Complainant's response to this inquiry. The Complainant states it submitted a document outlining how SFA would provide fueling services. [FAA Exhibit 1, Item 1, exhibit C, p. 4] The Respondent states, "SFA was not

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<sup>17</sup> The Complaint alleges that the Respondent's noncompliance began on approximately March 11, 2008. [FAA Exhibit 1, Item 1, ¶20] But the Complainant's Reply infers the Respondent granted an exclusive right to Sunbird Aviation Services on an interim basis prior to this date. [FAA Exhibit 1, Item 4, p. 1]

<sup>18</sup> See Footnote 13.

interested in providing the fueling services since it did not have sufficient capital for startup costs.” [FAA Exhibit 1, Item 3, Attach. I, p. 4] The Record does not include any evidence to document a November 2007 fueling proposal from the Complainant.

On November 21, 2007, the Respondent contacts S Jet to discuss its willingness to perform flight line and fuel dispensing services using the Respondent’s fuel tank farm. [FAA Exhibit 1, Item 3, Attach. I, p. 4] S Jet expresses interest in conducting these services. [FAA Exhibit 1, Item 3, Attach. I, p. 4] However, S Jet states it does not wish to provide light aircraft maintenance (an activity that had been required in the RFP). [FAA Exhibit 1, Item 3, Attach. I, p. 4] The Record does not explain if S Jet submitted a proposal. However, the Record does support the fact that the Respondent and S Jet reached agreement about how S Jet would offer these services on a month-to-month basis. [FAA Exhibit 1, Item 3, exhibit E, sub exh. 1] Section B of the lease addendum requires S Jet to perform 12 specific activities considered line services. [FAA Exhibit 1, Item 3, exhibit E, sub exh. 1, pp 1-2] Section D of the lease addendum permits S Jet to use the Airport’s fuel farm to dispense fuel, and Section F requires S Jet to obtain the Respondent’s written approval of its price for fuel and pay fuel flowage fees. [FAA Exhibit 1, Item 3, exhibit E, sub exh. 1, p. 3] Additionally, the Respondent and S Jet agree that S Jet will provide certain airport management activities on the Respondent’s behalf and receive compensation for doing so. [FAA Exhibit 1, Item 3, exhibit E, sub exh. 1, pp 3 & 5]

Both the Complainant and S Jet participate in this alternative business solicitation process. As a result, both the Complainant and S Jet become general FBOs in the spring of 2008.<sup>19</sup> [FAA Exhibit 1, Item 1, exhibit B, sub exh. 1 and FAA Exhibit 1, Item 3, exhibit E, sub exh. 1 and 2] The Complainant is able to offer airframe and powerplant repair services. [FAA Exhibit 1, Item 1, exhibit B, sub exh. 1] S Jet begins offering flight line services and fuel dispensing services.<sup>20</sup> [FAA Exhibit 1, Item 3, exhibit E sub exh. 1 and 2] S Jet also assumes responsibilities associated with management of the Airport’s terminal building. [FAA Exhibit 1, Item 3, exhibit E, sub exh. 1, p. 3 and FAA Exhibit 1, Item 3, exhibit E, sub exh. 2, p. 3]

The Respondent’s informal business solicitation process results in the continued availability of essential aeronautical services, as well as new aeronautical services. While this process was not ideal, the Director believes it was a reasonable approach based on the particular circumstances at that time.

### ***Complainant’s Second Proposal***

Shortly after S Jet begins selling fuel at the Airport, the Complainant requests permission to sell fuel to its customers. [FAA Exhibit 1, Item 3, exhibit G] The Complainant’s May 14, 2008 letter states it, “*will lease from Krohn Aviation, LLC one Avgas fuel truck (1800 gallon capacity) and one Jet A fuel truck (3000 gallon capacity).*” [FAA Exhibit 1, Item 3, exhibit G] The letter is unclear as to whether or not the Complainant requested access to the City-owned fuel tank farm.

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<sup>19</sup> See Footnote 13.

<sup>20</sup> S Jet’s lease addendum requires S Jet to obtain the City’s written approval of the price it sets for fuel. [FAA Exhibit 1, Item 3, exhibit E, sub exh. 1, p. 3 and FAA Exhibit 1, Item 3, exhibit E, sub exh. 2, p. 3]

In the proposal attached to this letter, the Complainant states:

*"Premier Aviation Services, LLC, Conditions for Operation and Use:*

- *Operate the flight line service from the Terminal facilities and incur no expenses of rent or utility bills.*
- *We will use Hangar # 2 for overnight transient aircraft, and split the fee with the City of Springfield. The City of Springfield will get fifty percent of the hangar fee. We will only use hangar # 2 for this purpose and we will not pay any rent or utilities for hangar #2.*
- *The City of Springfield must install a self service fuel center.*
- *The City of Springfield will provide weather information service.*
- *Premier Aviation Services, LLC will take into consideration the City of Springfield's recommendation on fuel prices but Premier Aviation Services, LLC will make every effort to have the most competitive fuel prices within the area."*  
[FAA Exhibit 1, Item 3, exhibit G, sub exh. 1, p. 5]

In its Answer, the Respondent argues that this proposal was not advantageous for the Airport. The Respondent states:

*"The SFA May 14, 2008 proposal was not competitive with the City's existing arrangement with S-Jet and included SFA demands that the City could not live with. First, SFA was offering only an abbreviated set of flight line services compared to what was provided by Sunbird in the past and S-Jet at present and what the KSGH general aviation community expected. Second, the City did not have the capital improvement resources needed to provide the self-service fuel center the SFA proposal depended upon. Third, SFA demanded control of the fuel prices it would charge at KSGH, a situation the City had decided would not be permitted (this was known to SFA). Finally, SFA did not propose making any improvements to KSGH infrastructure and S-Jet had already made a significant investment in the terminal building facilities."* [FAA Exhibit 1, Item 3, Attach. I, p. 5]

However, the Record is unclear if these reasons were communicated by the Respondent to the Complainant at the time the proposal was made. The Record notes that five months after receiving the Complainant's May 2008 fueling proposal, the Respondent wrote to the Complainant stating:

*"As you will recall, Springfield Flight Academy was given the opportunity to bid on FBO services and chose not to do so. I later discussed both airplane maintenance and fuel sales with Aaron [SFA's Vice President] and, at the time, Aaron decided only to pursue airplane maintenance. Accordingly, I approached S Jet LLC regarding other FBO services, including fueling. I do not believe it is in the best interest of the Springfield airport to have two separate individuals providing fueling services, and therefore must deny your request to sell fuel."*  
[FAA Exhibit 1, Item 3, exhibit H]

The Respondent's reasons for rejecting the Complainant's proposal, as stated above, could be interpreted to evidence a lack of understanding with regard to the Respondent's obligations under Grant Assurance 22. However, the Director believes the Respondent rejected this proposal for valid reasons. First, the Complainant offers a lower level of service because it seeks only to fuel its customers. Second, the proposal is contingent upon significant additional accommodations, including the Respondent's investment in new equipment and willingness to provide other services. Third, it seeks a competitive advantage in its ability to set fuel prices.

Part 16 precedent supports the Director's position that, "airport sponsors may change lease terms, rates, and conditions of occupancy in order to balance the various legitimate interests of the public, including improved business practices." [Rick Aviation FAD at 2] Therefore, even if S Jet's access to the City-owned fuel tank farm deviated from the Airport's Minimum Standards, the Respondent is not obligated to lower its expectations in order to accommodate the Complainant.

An airport sponsor is obligated to maintain the airport and operate the aeronautical facilities and common use areas for the benefit of the public. How an airport opts to carry out this responsibility is a matter of the sponsor's proprietary discretion. [Delbert Johnson d/b/a Two Dogs Aviation v. Goldsboro-Wayne Airport Authority, FAA Docket No. 16-08-11, (October 9, 2009) (Director's Determination) at 29 (Two Dogs Aviation)] An airport sponsor is certainly not required to incur additional expenses or give up any rights it has retained in other negotiated agreements simply to accommodate the desires of an entity proposing a specific business plan.

### ***Complainant's Third Proposal***

In April of 2009, the Complainant proposes to offer MoGas and avgas sales. [FAA Exhibit 1, Item 3, exhibit K, sub exh. 1, p. 1] The proposal is unclear as to whether or not the Complainant requested access to the City-owned fuel tank farm.

The third proposal is conditioned upon the following demands:

*"Remittance of funding, equal to that given to S-Jet via a no-bid contract, for the period beginning April 2008 to present*

*Remittance of Springfield Flight Academy's hangar lease payment for the period at April 2008 to present (in accordance with S-Jet and Select Tech's lease agreements)*

*Either, the nullification and re-bid of S-Jet's fuel services contract, or a lease agreement equal to that provided to S-Jet*

*No restrictions or exclusions to the range and type of services provided by Springfield Flight Academy and its whole [sic] owned subsidiaries." [FAA Exhibit 1, Item 3, exhibit K, sub exh. 1, p. 1]*

On June 9, 2009, the parties meet to discuss this proposal and the Complainant's expired lease agreement. [FAA Exhibit 1, Item 3, Attach. I, pp 7-8] The Respondent declined to change its Minimum Standards to permit the sale of MoGas, but states, "*it was agreed that SFA would meet with S-Jet to work out a mutually beneficial arrangement to share the City's fuel tank farm.*" [FAA Exhibit 1, Item 3, Attach. I, p. 8]

At the June 9, 2009 meeting, the Complainant objected to negotiations regarding its rent. The Complainant states, "*we were completely shocked at the proposed increase in rent...*", but the Respondent states it offered to keep the Complainant's rent at the same rate as the 2008 lease. [FAA Exhibit 1, Item 1, exhibit C, p. 10 and FAA Exhibit 1, Item 3, Attach. I, p. 8]

Nothing in the Record explains whether or not the Complainant approached S Jet to explore sharing the City's fuel tank. This is important, because the Director often examines the tangible steps taken by a Complainant to pursue its business proposal as evidence to support the realistic intent that is needed to further negotiations. This is discussed extensively in Two Dogs Aviation:

"...the Director cannot find that the Complainant has been denied access to the Airport. The Director notes the absence of tangible steps taken by the Complainant to demonstrate his substantial or realistic intent with regard to pursuing his business proposal after it was conditionally approved. Until the Complainant renews his interest by taking tangible steps to address the conditions required for the approval of his self-service fueling facility, the Respondent cannot be expected to engage in further good faith negotiations with the Complainant." [Two Dogs Aviation at 25-26]

### ***Informal Complaint***

The Record describes a series of teleconferences in which the FAA's Detroit Airports District Office attempted to assist the two parties during the summer of 2009. [FAA Exhibit 1, Item 3, exhibits P, Q, R, and S] These discussions resulted in the development of two possible fuel options to accommodate the Complainant. [FAA Exhibit 1, Item 3, exhibit T] The Record is unclear as to whether or not the Complainant found either option acceptable, but notes a meeting between the parties and S Jet on September 16, 2009. [FAA Exhibit 1, Item 3, Attach. I, p. 9]

On November 16, 2009, the FAA's Detroit Airports District Office held a meeting with the two parties. The meeting notes state that S Jet's "*proposed fueling agreement does not meet with SFA's approval on several points.*" [FAA Exhibit 1, Item 3, exhibit W, p. 2] Then on December 10, 2009, the Complainant provided its edits to S Jet's "Agreement to Purchase 100LL Fuel". [FAA Exhibit 1, Item 3, exhibit X] S Jet rejected the Complainant's proposed amendments out of liability concerns, but offered:

"*However, the option that has been open to you is to take advantage of the fuel discount of ten cents a gallon. This is available to all those who reside on the airfield.*" [FAA Exhibit 1, Item 3, exhibit Z, p. 1]

### **Conclusion**

Although the Respondent expressed concerns about two separate entities providing fueling services in October of 2008, the Record documents extensive discussions between the two parties throughout 2009. But the Director cannot disregard this salient fact: the Complainant repeatedly tied its fueling proposals to other demands and conditions. In fact, each proposal included in the Record stipulates that the Complainant would have final say in the sales price. [FAA Exhibit 1, Item 3, exhibit G, sub exh. 1, p. 5; FAA Exhibit 1, Item 3, exhibit K, sub exh. 1, p. 3; FAA Exhibit 1, Item 3, exhibit X, sub exh. 1, pp 2-3]

The Complainant is unable to meet the threshold associated with allegations of unjust economic discrimination. As the Director stated above, a complainant must establish that it requested *similar terms and conditions* as other similarly situated airport users and was denied for unjust reasons. [See Aerodynamics DD at 19]

The Director compares the extant case to Self Serve Pumps; wherein the Director's Determination states:

"In order to sustain an allegation of unjust economic discrimination, the discrimination must be unjust. It can only be unjust if the preferred party is similarly-situated to the dis-preferred party. In this case, the Complainant (allegedly the dis-preferred party) is so dis-similar from the full-service FBOs at PWK as to in no way be similarly-situated. It is insufficient to simply state that another party is managing to escape sanction from the airport sponsor by departing from standards in one way, so that the airport sponsor must allow a complaining party to depart from standards in a different way. In fact, to sustain an allegation of unjust discrimination, the Complainant, in the extant case, must comply with Minimum Standards to a degree similar to Signature Aviation and request similar treatment in any preference granted by the Airport. That is clearly not the case here. In fact, the Complainant is insisting that it be treated in a wholly different, preferential manner." [Self Serve Pumps at 27]

The Complainant's Reply acknowledges these dissimilarities, but argues, "*this fact did not give Respondent license to discriminate against SFA.*" [FAA Exhibit 1, Item 4, p. 2] Yet, the Complaint fails to meet the threshold needed to substantiate its allegation because the Complainant never establishes that it requested similar terms and conditions as S Jet.

The history of the parties' negotiations, as shown by the body of evidence, leads the Director to the conclusion offered by the Respondent:

*"Complainant has never offered to perform the fuel dispensing service from Respondent's fuel tank farm with terms more advantageous to Respondent than the terms under which S-Jet, LLC currently performs fuel dispensing services from Respondent's fuel tank farm. At best, Respondent understands that Complainant would perform fuel dispensing services using Respondent's fuel tank farm under the same economic conditions as provided under the S-Jet, LLC*

*arrangement; provided, Complainant can control (have final say on) the fuel price.” [FAA Exhibit 1, Item 5, ¶4]*

An airport’s prime obligation is to serve the interest of the aeronautical using public. [See United States Construction Corporation v. City of Pompano Beach, Florida, FAA Docket No. 16-00-14, (July 10, 2002) (Final Agency Decision) at 21 and Sterling Aviation, LLC v. Milwaukee County, Wisconsin, FAA Docket No. 16-09-03, (April 13, 2010) (Director’s Determination) at 24 (Sterling)] In pursuing this goal, the FAA expects airports sponsors to foster a competitive business environment that attracts qualified aeronautical service providers. However, an airport sponsor is under no obligation to provide application assistance or incubate business plans that lack clarity and stability. [See Atlantic Helicopters Inc./Chesapeake Bay Helicopters v Monroe County, Florida, FAA Docket No. 16-07-12, (December 3, 2008) (Director’s Determination) at 37 and Aero Ways, Inc. v. Delaware River & Bay Authority, FAA Docket No. 16-09-12, (August 30, 2010) (Director’s Determination) at 29 (Aero Ways)] The Director recognizes that the Respondent negotiated its agreement with S Jet during a time when it faced uncertainty regarding its ability to maintain a basic level of service at the Airport. The Director also recognizes that the Respondent retained its ability to rescind or amend this lease addendum because its duration is month-to-month. As such, the Director fully expects the Respondent to entertain proposals that may be offered by qualified aeronautical service providers in the future.

#### **Whether Other Actions Taken by the Respondent Were Reasonable**

The Complaint makes numerous allegations regarding its lease negotiations and actions the Respondent has taken to evict the Complainant:

*“In retribution for SFA seeking the help of the FAA and other Governmental Agencies, the City vexatiously refused to discuss, negotiate, or even entertain any dialog regarding SFA’s reasonable and justified request for a lease extension of SFA’s one year lease, which expired with the City on March 11, 2009.” [FAA Exhibit 1, Item 1, ¶9]*

*“In retribution for SFA seeking the help of the FAA and other Governmental Agencies to remedy the City’s discriminatory practices, the City punished SFA by continuing their tenancy at a federally Funded Airport on only a month to month basis.” [FAA Exhibit 1, Item 1, ¶10]*

The Respondent denies this allegation. [FAA Exhibit 1, Item 3, ¶2] The Respondent states:

*“... Respondent says that Complainant and Respondent engaged in months of negotiations between April 2009 through July of 2010 in an attempt to resolve differences between the parties and to enter into a new lease between the parties. These negotiations included participation in an FAA Part 13 proceeding wherein the FAA attempted to mediate the resolution of differences.” [FAA Exhibit 1, Item 3, ¶3]*

The Director finds these allegations lack merit. The Complainant agreed to a one-year lease term. [FAA Exhibit 1, Item 1, exhibit B, sub exh. 1, p. 3] That lease expired, and the Respondent permitted the Complainant to continue operating from its leased premises on a month-to-month basis although it had no obligation to do so.

The Director has described, in great detail, the negotiations which occurred in 2009. Presumably, had the parties reached an agreement regarding the Complainant's desire to sell fuel, the parties would have memorialized such an agreement in a lease or other document.

The last entry in the Complainant's timeline is November 24, 2009. [FAA Exhibit 1, Item 1, exhibit C, p. 12] The Respondent provides a copy of an e-mail from the Complainant dated June 22, 2010 which indicates the Complainant's desire to "begin negotiations on our lease agreement." [FAA Exhibit 1, Item 3, exhibit AA, p. 1] But the Record contains no discussion of lease negotiations for the first half of 2010.

The Complainant further states:

*"The City now seeks to evict SFA, in furtherance of its discriminatory practices."*  
[FAA Exhibit 1, Item 1, ¶11]

The Respondent states the reason for the eviction is because:

*"... Complainant's tenancy has been terminated and Complainant refused to vacate Maintenance Hangar #1."* [FAA Exhibit 1, Item 3, ¶7]

On June 22, 2010, the Complainant sent an e-mail to the Respondent which states:

*"Our 100LL fuel truck has returned to the airfield. As no other viable solution has been presented, at this time we will be trucking in fuel for our operations. In addition, after discussions with legal advise (sic), our customer base, and deliberation between the principle management staff, we have decided to offer this fuel for sale. We fully understand that this is not a popular decision, but we believe we cannot grow without establishing ourselves as a full FBO, and that doing so will benefit the airport, the community, and our customers."* [FAA Exhibit 1, Item 3, exhibit AA, p. 1]

On July 23, 2010, the Respondent sent the Complainant a certified letter stating that if the Complainant did not stop selling aircraft fuel immediately, its tenancy would be terminated. [FAA Exhibit 1, Item 3, exhibit BB, p. 1] The Complainant continued to dispense fuel from its trucks at the Airport. [FAA Exhibit 1, Item 3, exhibit CC, p. 1] On August 11, 2010, the Respondent sent the Complainant a certified letter stating that its tenancy would be terminated effective September 30, 2010. [FAA Exhibit 1, Item 3, exhibit CC, p. 1]

The Complainant provides no evidence to support its allegation that the eviction is driven by discrimination, nor does the Complainant dispute the facts presented by the Respondent. Instead, the Complainant speculates as to the Respondent's motive.

The Director dismisses this allegation. First, motive alone is insufficient for finding a grant assurance violation. [See Self Serve Pumps at 31] Second, the Respondent provides persuasive evidence to document valid reasons for terminating the Complainant's tenancy including the fact that the Complainant blatantly violated the terms of its lease agreement by selling fuel on the Airport. The Director further notes that had the Respondent not taken such action, it could have exposed itself to other potential allegations of grant assurance violations by not applying the Minimum Standards to the Complainant. Finally, the Director does not feel it appropriate to opine on matters related to an eviction proceeding as such action is outside the scope of 14 CFR Part 16.

The Complainant states:

*"Finally, Respondent failed to comply with Airport Grant Assurance 22(B) by failing to insure this critical mandated language was included in the 2006 lease between the City and Springfield Flight Academy, and was further in direct conflict with FAA Order 5190.6B, Chapter 12, entitled Aeronautical Lease Agreements." [FAA Exhibit 1, Item 4, p. 2]*

The Respondent states:

*"Respondent did not fail to put any mandated language into its 2008 lease with Complainant. Complainant is not entitled to a perpetual lease with terms dictated by Complainant. Complainant's lease came to an end. Complainant and Respondent have not been able to successfully negotiate a new lease. Complainant has chosen not to give up possession of leased premises though its tenancy has come to an end, making it necessary for Respondent to initiate wrongful detainer proceedings against Complainant. Complainant raised a defense claiming that Respondent's notice to vacate the lease premises was premature. The court has found that Complainant's defense is without merit. Complainant raised a defense claiming that Respondent must extend its lease with Complainant and may not terminate Complainant's tenancy. The court noted that there is no extension provided for within the four corners of the lease and has found that Complainant's defense is without merit." [FAA Exhibit 1, Item 5, ¶7]*

The Director has reviewed the Complainant's 2008 lease and finds the Complainant's allegation is without merit. Articles XXI and XXII of the lease include FAA-recommended clauses pertaining to Grant Assurance 22, Grant Assurance 23, Civil Rights, and general subordination. In fact, Article XXI, paragraph C states, "*All services provided by or furnished by the LESSEE shall be furnished on a fair, equal and not unjustly discriminatory basis to all users thereof and the operator shall charge fair, reasonable and not unjustly discriminatory prices for each unit of service; provided, however, LESSEE may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions.*" [FAA Exhibit 1, Item B, sub exh. 1, p. 11] Additionally, an airport sponsor cannot violate FAA Order 5190.6B because it is not controlling with regard to airport sponsor conduct. [See Gina Michelle Moore, individually, and d/b/a Warbird Sky Ventures, Inc. v. Sumner County Regional Airport Authority, FAA Docket

No. 16-07-16, (February 27, 2009) (Director's Determination) at 20; *aff'd*, Gina Michelle Moore, individually, and d/b/a Warbird Sky Ventures, Inc. v. Sumner County Regional Airport Authority, FAA Docket No. 16-07-16, (July 13, 2010) (Final Decision and Order)]

### Summary of Issue One

This matter arose when the Respondent was forced to rely on a process of informal negotiations in order to secure essential aeronautical services at the Airport. This informal process did not violate Grant Assurance 22, and initially benefitted the Complainant. However, after the Complainant realized another aeronautical service provider benefitted from this process too, it initiated an aggressive effort to secure a better deal. This is not wholly consistent with the protections afforded under Grant Assurance 22. Grant Assurance 22 promotes a level playing field which fosters healthy competition among qualified aeronautical service providers that agree to the same set of rules. In this case, the Complainant's pursuit of different terms, conditions, and concessions eclipsed its ability maintain its tenancy at the airport. As such, the Director finds the Respondent made the Springfield-Beckley Airport available to the Complainant on reasonable terms and without unjust discrimination.

#### Issue (2)

Whether the Respondent limited the Complainant's ability to self-service its aircraft in violation of Grant Assurance 22, *Economic Nondiscrimination*.

The Complaint states the Respondent has violated:

*"Federal Airport Assurance 22 (d) relating to the City's failure to allow Springfield Flight Academy the right to service itself in light of the fact that SFA has a State of Ohio Motor Fuel Dealers License, allowing them to sell fuel at KSGH."* [FAA Exhibit 1, Item 1, ¶ 23]

The Respondent denies this allegation. [FAA Exhibit 1, Item 3, ¶ 2] The Respondent states:

*"After the City entered into the arrangement with S-Jet to provide the flight line services and fuel dispensing services using the City's fuel tank farm, SFA became interested in selling fuel at KSGH."* [FAA Exhibit 1, Item 3, Attach. I, p. 5]

The Director believes the Complainant has misconstrued the protections afforded by Grant Assurance 22(d). Grant Assurance 22(d) protects an air carrier's right to service its own aircraft; it does not create a right to sell fuel to other aircraft owners.

The Record describes the Complainant's future plans to offer air charter services. [FAA Exhibit 1, Item 3, exhibit K, sub exh. 1, p. 1 and FAA Exhibit 1, Item 3, exhibit Y] However, there is nothing to indicate that the Complainant took any steps to obtain an air carrier certificate, a regulatory prerequisite to offering air charter services. As a result, Grant Assurance 22(d) is not applicable to the Complainant because the Complainant is not an air carrier.

Grant Assurance 22(f) explicitly protects the rights of individuals and corporations to perform services, such as fueling, on their own aircraft with their own employees.<sup>21</sup> FAA Order 5190.6B states, "The FAA considers the right to self-service as prohibiting the establishment of any unreasonable restriction on the owners or operators of aircraft regarding the servicing of their own aircraft and equipment." [See FAA Order 5190.6B, ¶11.2.]

The Record contains no evidence to suggest the Respondent denied the Complainant the right to self-fuel its own aircraft with MoGas. The Complainant's timeline acknowledges:

*"We had been, and continue to use MoGas for our primary training aircraft, and simply wished to subplant (sic) our income and provide an additional income stream to support the fueling equipment we maintain."* [FAA Exhibit 1, Item 1, exhibit C, p. 10]

When an airport sponsor allows a tenant to expand its self-fueling activities to aircraft it does not own, lease, rent or operate for its exclusive use, it offers a privilege outside its obligations contained in Grant Assurance 22(d) and (f). [See Sterling at 13 and Aero Ways at 18] The Respondent has declined the Complainant's repeated requests to grant such a privilege and this decision is not unreasonable or unjustly discriminatory as thoroughly discussed under Issue 1 above.

Given that the Complainant is not an air carrier, the Director finds that Grant Assurance 22(d) does not currently apply to the Complainant and dismisses this allegation. Additionally, Grant Assurance 22(f) does not apply because the Complainant has not been prohibited from self-fueling its own aircraft.

### **Issue (3)**

Whether the Respondent limited the right to sell fuel to a single provider in violation of 49 U.S.C. § 40103(e) and Grant Assurance 23, *Exclusive Rights*.

The Complainant makes numerous allegations with regard to Grant Assurance 23, *Exclusive Rights*. The Complainant states:

*"That the City owns a fuel farm on the airport at KSGH, and in a discriminatory manner gave S-Jet exclusive rights to this public fueling facility, to the exclusion of all other Fixed Base Operators (FBOs) on the field."* [FAA Exhibit 1, Item 1, ¶12]

*"That the City refuses to allow all FBOs on the field equal access and rights to the City's fuel farm, and further gave S-Jet the discriminatory power and authority to charge whatever price they want for fuel at the City's fuel farm to SFA and the other FBOs at the airport, thereby placing SFA in a position where it*

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<sup>21</sup> Although the Complaint does not allege a violation of Grant Assurance 22(f), the Director discusses this matter in an effort to thoroughly address any misconceptions the Complainant might have about the right to self-service one's own aircraft.

*has to exercise self fueling rights to be competitive and stay in business.*” [FAA Exhibit 1, Item 1, ¶13]

*“That the City discussed this exclusive use matter with SFA by way of a letter dated November 9, 2009, wherein the city rationalized it’s grant of exclusive use of the fuel farm to S-Jet as ‘on a short term basis’, which in fact was completely disingenuous and a fabrication.”* [FAA Exhibit 1, Item 1, ¶15]

*“That the city allows S-Jet to act in an exclusive fashion as the only ‘FBO’ fuel provider, when in fact S-Jet is not an FBO and does nothing but sell fuel.”* [FAA Exhibit 1, Item 1, ¶16]

*“That the City discriminated against SFA by providing exclusive use of the City owned public fuel tanks to only one operator at the airport.”* [FAA Exhibit 1, Item 1, ¶22]

*“That the City discriminated against Springfield Flight Academy by unreasonably, arbitrarily and capriciously allowing S-Jet exclusive access to the City owned fuel farm, in complete contravention of compliance with 49 U.S.C. §§ 47107(a) and 40103(e).”* [FAA Exhibit 1, Item 1, ¶26]

The Respondent answers:

*“...Respondent admits that it owns a fuel tank farm at KSGH but in all other respects Respondent denies the allegations of paragraphs 12 and 13.”* [FAA Exhibit 1, Item 3, ¶8]

The Respondent denies all allegations related to Grant Assurance 23. [FAA Exhibit 1, Item 3, ¶2]

Grant Assurance 23, *Exclusive Rights*, prohibits an airport sponsor from granting to one entity the right to provide a particular aeronautical service to the public while preventing other similarly situated entities from offering the same aeronautical service. FAA Order 5190.6B defines an exclusive right as, “a power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege or right.” [FAA Order 5190.6B, ¶8.2.]

The Director finds the Complainant’s claims with regard to Grant Assurance 23 to be without merit and not supported by the Record. Under Issue One, the Director analyzed the various fueling proposals made by the Complainant. The Record fails to clearly establish that the Complainant even sought to use the City-owned fuel farm when it made its first three proposals. In 2009, the Complainant was offered access to the City-owned fuel farm but then refused to agree to requirements associated with record-keeping, insurance, liability, and pricing. [FAA Exhibit 1, Item 3, exhibit X, sub exh. 1] The fact that the Complainant has not been permitted to sell fuel on the terms it deems to be sufficiently advantageous does not result in the constructive granting of an exclusive right. (Wilson DD at 28)

The Complainant's allegation that S Jet is permitted to set its own fuel prices is also not supported by the Record. Section F of S Jet's lease addendum states:

*"Tenant will establish the sale price, subject to written approval of such sale prices by Owner, for aviation fuel sold at the Airport and dispensed by Tenant into aircraft on the Airport (hereinafter called 'fuel sold to the public') other than aircraft owned or leased by Tenant or an affiliate of Tenant..."* [FAA Exhibit 1, Item 3, exhibit E, sub exh. 1, p. 3 and sub exh. 2, p. 3]

The Respondent's background explains that it has often leased the use of its fuel tank farm to aeronautical service providers. [FAA Exhibit 1, Item 3, p. 1] But it also notes that this has not excluded others from accessing it. The Respondent states:

*"The representatives of SFA and S-Jet also discussed the prior arrangement between S-Jet and Sunbird and S-Jet pointed out the difference between that arrangement and what SFA proposed. S-Jet did not ask to serve 'transient air traffic' as proposed by SFA. S-Jet (when it was obtaining fuel from Sunbird) chose to fuel only its own customers."* [FAA Exhibit 1, Item 3, Attach. I, p. 9]

In its Reply, the Complainant makes a new argument alleging:

*"That on page one of the Respondent's Attachment to the Answer the Respondent describes the granting of exclusive rights to Sunbird Company on an interim basis. This 'interim' decision has turned into the clear pretext for the Respondent to continue to be in violation of the Federal Airport Grant Assurances, to the economic disadvantage of all of the other tenants and users at KSGH including Springfield Flight Academy."* [FAA Exhibit 1, Item 4, pp 1-2]

The Respondent argues that this allegation is irrelevant to any matter within the purview of the Complaint. [FAA Exhibit 1, Item 5, ¶5]

The Director notes this allegation conflicts with the Complainant's original assertion that Respondent's violations began on approximately March 11, 2008. [FAA Exhibit 1, Item 1, ¶20] Additionally, the Director fails to see any relevance given that Sunbird Air Services ceased doing business prior to any of the Complainant's requests to sell fuel. [FAA Exhibit 1, Item 3, Attach. I, p. 5]

The Complainant's allegations with regard to Grant Assurance 23 have no merit because they lack factual support. Complainant believes that only S Jet has the ability to access the City-owned fuel tank farm, but this is not supported by the evidence. Even if this were the case, the Complainant would need to establish that other qualified parties had been denied this right. The fact that a single business or enterprise may provide most or all of the on-airport aeronautical services is not, in itself, evidence of an exclusive rights violation. [See FAA Advisory Circular 5190-6, *Exclusive Rights at Federally Obligated Airports*, Section 1.3.(b)(2.)] Therefore, the Director finds the Respondent has not granted an exclusive right to S Jet and is not in violation of Grant Assurance 23, *Exclusive Rights*.

## VII. CONCLUSION

Upon consideration of the entire Record herein, the applicable law and policy, and for the reasons stated above, the Director finds and concludes:

- (1) The Respondent did not fail to make the Springfield-Beckley Airport available to the Complainant on reasonable terms and without unjust discrimination in violation of 49 U.S.C. § 47107(a)(1) and Grant Assurance 22, *Economic Nondiscrimination*.
- (2) The Respondent did not limit the Complainant's ability to self-service its aircraft in violation of Grant Assurance 22, *Economic Nondiscrimination*
- (3) The Respondent did not limit the right to sell fuel to a single provider in violation of 49 U.S.C. § 40103(e) and Grant Assurance 23, *Exclusive Rights*.

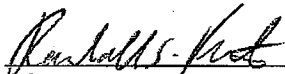
## ORDER

Accordingly, it is ordered that:

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

## RIGHT OF APPEAL

This Director's Determination is an initial agency determination and does not constitute final agency action and order subject to judicial review. [14 CFR § 16.247(b)(2).] A party to this Complaint 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.

  
\_\_\_\_\_  
Director  
Office of Airport Compliance  
and Management Analysis

August 25, 2011  
Date