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August 28, 2014

Office of the Chief Counsel
Attention: FAA Part 16 Airport Proceedings Docket
AGC-610
Federal Aviation Administration
800 Independence Ave. S.W.
Washington, D.C. 20591

Re: Part 16 Complaint
National Business Aviation Association, Krueger Aviation, Inc., Harrison Ford, Justice Aviation, Kim Davidson Aviation, Inc., Aero Film, Youri Bujko, James Ross, Paramount Citrus LLC and Aircraft Owners and Pilots Association v. City of Santa Monica, California
Docket Nos. 16-14-04/FAA-2014-0592[1]

Answer of the Complainants to Respondent's Motion to Dismiss

The Complainants, as set forth above, submit this answer to the August 14, 2014 Motion to Dismiss ("Motion") filed by the City of Santa Monica ("Santa Monica," "City," or "Respondent"), sponsor and operator of the Santa Monica Municipal Airport ("SMO" or "Airport"). For the reasons set forth below, Complainants request that the Motion be denied, that the FAA require the Respondent to file an Answer to the Complaint, that the FAA subsequently address the substance of the Complaint, and, in so doing, confirm that the Grant Assurances remain in effect for SMO and the City through 2023.

INTRODUCTION

As an initial matter, it is important to understand what this Part 16 proceeding is actually about – and not what the Respondent has attempted to reframe it as being about:

- It is not about the terms of Airport leases.

[1] A copy of the Complaint also has been posted at the regulations.gov website under dockets nos. 16-14-05/FAA-2014-0538. To the extent applicable, this reply also pertains to those dockets.

- It is not about redressing future violations of Grant Assurances.

- It is not about the City's ability to evaluate options or to consider what actions it might take as a proprietor of SMO.

- And it clearly does not seek an "advisory" opinion.

These arguments by Santa Monica are all red herrings. This Part 16 action is solely about a determination that the City already has made, repeatedly affirmed in writing (including in both federal court and the present proceedings), and disseminated widely: namely, that its Grant Assurance obligations ended on June 29, 2014 – two months ago – and that since then the City no longer has been a federal grantee airport sponsor obligated to comply with those Grant Assurances.

The Complainants – and all Airport tenants and users – have been, are, and will continue to be impacted by the purported loss of the protections afforded by Grant Assurances at SMO, and commenced this action to challenge the City's determination. The FAA indisputably has jurisdiction under Part 16 to address that request; both the FAA's broad mandate under Part 16 and its own precedents permit present scrutiny of the City's decision.

Even though the City contends that none of the Grant Assurances are still applicable at the Airport, it maintains in its Motion that Part 16 cannot be invoked by the Complainants because the Complaint has not alleged a violation of any particular Grant Assurance. That is incorrect. While Part 16 complaints typically do allege a violation of one or more Grant Assurances, Part 16 does not require that any specific Assurance be at issue; indeed, the FAA has never considered itself to be limited to reviewing an airport's compliance with the Assurances cited in a complaint – and, as discussed *infra*, there is ample authority to support the applicability of Part 16 in the present circumstances.

Additionally, the City argues that its rejection of its federal obligations has not yet had a "direct and substantial" effect on Complainants, who must, in its view, wait until the City takes additional steps to further implement its determination before the necessary harm can be said to exist to maintain a Part 16 complaint. That is also incorrect. Unlike the City's consideration of potential future Airport scenarios – such as those in its ongoing "Visioning Process" – the impacts of the City's already definitive rejection of its Grant Assurance obligations are immediate and real, and implicate the present interests of Airport tenants and users, including Complainants. For the reasons set forth below, these impacts clearly meet the requirements of Part 16.

The remainder of the City's objections to the Complaint are, individually and collectively, equally groundless. They also are addressed *infra*.

Finally, it is apparent from the Motion that the City believes that its 1984 Settlement Agreement with the FAA – which imposes certain obligations on the City until July 1, 2015 – allows it to shield and obfuscate the ultimate impacts of the decision it has already made regarding the Grant Assurances. The City repeatedly asserts in its Motion that it has not yet

concluded precisely how it will use its declared "freedom" from federal obligations. But that is ultimately irrelevant. The City is the respondent in this proceeding because it has adopted and implemented a legal position (which no other grantee sponsor has ever presumed to assert): that it has the power unilaterally to decide when its federal obligations end. That the 1984 Settlement Agreement separately applies to the Airport for another ten months does not validate what the City has done, or render the need for an FAA ruling on the Complaint any less urgent.

ARGUMENT

This Answer generally will respond to the Motion in the same order that the issues were presented by the City, with a few exceptions for purposes of simplicity and clarity.

I. Factual Background

The FAA already is familiar with the history of SMO and the City's decades-long efforts to restrict operations at the Airport, or to close it altogether, and it need not be restated here. But it should be noted that the account of the history of SMO which appears in the Motion is greatly oversimplified and, in certain respects, inaccurate. Among other things, the City does not fully address the Airport's operation and improvement by the federal government during World War II and the subsequent conditional transfer of the improved Airport property to the City. While immaterial to the present Part 16 proceeding, the absence of a complete and accurate account of background facts should be noted.

More significantly, the City reiterates its position that the 2003 amendment to its grant agreement with the FAA (no. DTFA08-94-C-20857) did not extend its obligations beyond June 29, 2014, referring to certain exhibits attached to its Motion. This issue, and the same exhibits, already were reviewed by the FAA in *In re City of Santa Monica, California,* docket nos. 16-02-08/FAA-2003-15807, Director's Determination (May 27, 2008), which reached a different conclusion:

> In 2003 the City requested, and the FAA approved a grant amendment for $240,000, increasing its [Airport Improvement Program ("AIP")] grant total to $10.2 million. This was the last AIP-funded project at SMO to date. As a result, SMO is obligated under its AIP grant assurances until at least 2023.

Id. at 12-13 (footnote and citation omitted and emphasis added). Although this conclusion was not incorporated into the agency's final decision in that proceeding, and is not put at issue by the Motion, the City has offered no basis upon which a different result could be reached, and Complainants respectfully suggest that no such basis exists.

II. Failure to State a Claim

The City argues that the Complaint must be dismissed because it does not identify a specific Grant Assurance that the City is alleged to be violating. The Motion also argues that the Complainants are seeking an "advisory" opinion and that there is "no concrete dispute" to be adjudicated because, allegedly, the City is currently in compliance, and any harms to

the Complainants are speculative. As discussed *infra*, these arguments are flawed, and fail to establish that the Complaint does not state a claim that may be addressed by the FAA in this forum. Additionally, the City's argument in section IV(C) of the Motion (at 15-16) – which asserts that the FAA lacks jurisdiction to address the issues presented by Complainants – essentially restates those same points and also will be addressed here.

1. Jurisdiction

At its core, the City's argument is that the FAA's unquestioned jurisdiction to hear Grant Assurance-related disputes under Part 16 terminates when confronted with an airport sponsor's refusal to acknowledge that it has any Grant Assurance obligations at all. *See* Motion, at 12.

The short answer to this contention is that in Part 16 proceedings the FAA routinely considers, implicitly and explicitly, whether federal Grant Assurances or other cognizable authorities (such as Instruments of Transfer) are applicable to the airport sponsor. Such consideration is an important component of every reported Director's Determination and Final Agency Decision. Indeed, § 2.3 of the Airport Compliance Manual (FAA Order 5190.6B) reiterates that a standard element of FAA review is "Determining if an Airport is Federally Obligated."

Although in most instances this consideration is *pro forma* (because most sponsors do not join the City in disputing their federal obligations), it can, in fact, be the crux of a Part 16 proceeding. For example, *Dart v. City of Corona, California*, docket no. 16-99-20, Director's Determination (June 26, 2000), devoted a substantial portion of its analysis to the very issue of the sponsor's federal obligations. As described therein:

> The City takes the position that it is not a federally obligated airport sponsor and that the Airport is not a federally obligated airport because the land area on which the Airport is located was not conveyed by or paid for by the Federal government. In support of its assertion, the City submits that the Airport is not identified as such by inclusion in FAA Order 5190.2R, *List of Public Airports Affected by Agreements with the Federal Government*, and that the City consequently is not obligated to make the airport available to FAR Part 103 Ultralight vehicle operations.

Id. at 11. After analyzing all of the facts and circumstances, the Director's Determination concluded that the sponsor was subject to the prohibition against the grant of exclusive rights – although not pursuant to the Grant Assurances or an Instrument of Transfer, but instead another pillar of the FAA's authority:

> Against this background, and based on the evidence of record in this proceeding, we conclude that the City is not a federally obligated airport sponsor subject to Federal obligations set forth in agreements or property deeds over which FAA has congressionally mandated jurisdiction. However, our inquiry does not end here. FAA policy regarding the applicability of the exclusive rights prohibition specifically provides that the expenditure of FAA

> F&E funds for the installation of navigation aids on an airport makes the airport subject to the exclusive rights prohibition.

Id. at 15. The FAA has always had the power under Part 16 to resolve the "big picture" question of whether and to what extent an airport sponsor is federally obligated, and the agency should be surprised to learn that the City believes that it does not. The City would no doubt argue that here, unlike in *Dart*, the nature and scope of the City's federal obligations is the only question raised, but that is a distinction without a difference. The issue is the scope of the FAA's authority, which includes the question now at issue.

Further, the FAA's authority is broadly defined throughout Part 16. As an initial matter, 14 C.F.R. § 16.1(a) provides that: "The provisions of this part govern all … proceedings involving Federally-assisted airports," including proceedings filed pursuant to "[t]he assurances and other Federal obligations contained in grant-in-aid agreements issued under the Airport and Airway improvement Act of 1982…." Section 16.3 defines "noncompliance" – a predicate for a complaint as used elsewhere in Part 16 – as *"*anything done or omitted to be done by any person in contravention of any provision of any Act, as defined in this section, as to matters within the jurisdiction of the Administrator" (emphasis added). And Section 16.101 provides that in addition to reviewing third-party complaints: "The FAA may initiate its own investigation of any matter within the applicability of this part" (emphasis added). Grant Assurance duration is well within the ambit of these provisions.

The City also charges – although without elaboration or the benefit of any citation to authority – that the FAA lacks jurisdiction in this case because the Complaint "involves the interpretation and determination of the expiration date of a contract." Motion, at 15. Indeed it does, but not just of any type of contract – a contract which provided a grant to the City in return for its compliance with the assurances included therein. Essentially every Part 16 proceeding involves the interpretation and determination of obligations set forth in such a contract, or the similar obligations of a property transfer, as specifically authorized and intended by Part 16. Moreover, if this contention is intended to reflect language in the Final Agency Decision (July 8, 2009) in *In re City of Santa Monica, California,* docket nos. 16-02-08/FAA-2003-15807 – to the effect that the agency could not consider claims involving the 1984 Settlement Agreement in a Part 16 proceeding – the City's reliance upon that language is entirely misplaced.[2] No decision of the FAA even implies that because a Grant Assurance agreement itself is contractual in nature, the specific requirements of such an agreement – including its duration – may not be considered in a Part 16 proceeding.

In sum, the City's argument that the FAA lacks jurisdiction to hear the Complaint is created of whole cloth, without any basis in authority, and should be disregarded.

[2] In particular: "The City's obligations under the 1984 Settlement Agreement are not a proper subject in a proceeding under 14 C.F.R. Part 16 because that Agreement was not incorporated in the Grant Assurances." *Id.* at 4 (emphasis added).

2. "Advisory" Opinion

The City's Motion sets forth a raft of straw men – which have nothing to do with the actual allegations of the Complaint – and then asserts that the Complainants are seeking an "advisory" opinion concerning them. The Complaint in fact seeks no such opinion.

The City's current and past pronouncements and actions leave no doubt that it will continue its efforts to restrict operations at SMO or to close the Airport altogether in light of its claim to be free from Grant Assurance constraints. But Complainants do not seek a decision in this proceeding, as the City erroneously claims, that a particular lease term is or is not consistent with the Assurances.[3] Complainants do not seek an order "forcing the CITY to lease its property to them for eight (8) more years" (Motion, at 3), or an opinion "as to the legality of 'possible' future conduct" (Motion, at 15).[4] The relief sought by the Complaint is clear and limited:

> Complainants request that the FAA exercise its plenary authority under Part 16 to determine that the City's Grant Assurance obligations remain binding and effective, and that the City must continue to comply with those obligations, until no sooner than August 2023.

Complaint, ¶ 30. This is not a request for "an improper 'advisory' opinion based on speculation about the CITY's plans," Motion, at 13, but rather a request for a determination – well within the FAA's authority to issue – based on an actual and present controversy.

Part 16 decisions have recognized that "[t]he FAA Rules of Practice, 14 C.F.R. Part 16, apply the procedural structure of 49 U.S.C. section 46101(a) to complaints filed with the

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[3] However, the City does cite FAA precedent which confirms that an airport usually must make long-term leases available to tenants, to the extent it has entered into an agreement which requires the continued operation of the airport. *See* Motion, at 14 (citing *Santa Monica Airport Association v. City of Santa Monica, California*, docket no. 16-99-21, Director's Determination, at 22 (November 22, 2000)). That decision predated the City's 2003 Grant Amendment, so to the extent it also suggested that the outer boundary of the City's obligations was set by the 1984 Settlement Agreement, that language is now obsolete. *See also Skydance Helicopters. Inc. v. Sedona Oak-Creek Airport Authority*, docket nos. 16-02-02/FAA-2002-13068, Director's Determination, at 32 (March 7, 2003) ("the Authority provides no explanation as to why it could not have offered the Complainant a lease term that runs commensurate with the remaining length of its lease with the County").

[4] The Complaint did cite the short-term 3-year leases then proposed to the Santa Monica City Council as illustrative of the types of City action that Grant obligations would foreclose. *See* Complaint, ¶ 30, n.2. In fact, both this reference and the City's reliance on the staff proposal to extend the leases of Airport tenants for three years, *see* Motion, at 3 and 10, have proven optimistic. Two days before its Motion was filed, the City Council declined to adopt the proposal and directed the Santa Monica Airport Commission to consider shorter-duration alternatives, including month-to-month lease renewals. The minutes of the Council meeting are not yet available but a video of the Council's August 12, 2014 meeting is available at http://santamonica.granicus.com/mediaplayer.php?view_id=2&clip_id=3318. In any case, because of their short term nature, the adoption of either a three-year maximum or month-to-month terms by the City at a future date would be a violation checked by the continued applicability of the Grant Assurances.

FAA against federally assisted airports." *Jimsair Aviation Services, Inc. v. San Diego Regional Airport Authority*, docket nos. 16-06-08/FAA-2006-25225, Final Agency Decision and Order, at 15 (August 9, 2007). That procedural structure includes jurisdiction to "issue a declaratory ruling to terminate a controversy or remove uncertainty." Department of Transportation, *Hawaii Inspection Fee Proceeding*, Order 2012-1-18, at 7 (January 24, 2012); *see also Compass Airlines, LLC v. Montana Dep't of Labor & Industry*, No. 12-CV-105-H-CCL, 2013 WL 4401045, *14 (D. Mont., Aug. 12, 2013), (recognizing that 49 U.S.C. § 46101(a) empowers DOT agencies to "provide equitable remedies such as injunctive relief and declaratory relief"). Thus, the pending request clearly is not for an "advisory" opinion but for a declaratory remedy well within the agency's authority.[5]

3. Direct and Substantial Effect

As discussed above, Complainants vigorously dispute the City's assertion that its blanket rejection of all Grant Assurance obligations is not itself a cognizable matter for the purposes of Part 16. Complainants also maintain that the City's actions have a current effect upon them, and thus that they are "directly and substantially" affected by the City's non-compliance and have standing to the extent required by Part 16.

The City generally is correct that "the standing requirement ensures that the FAA's resources are not expended on matters in which the Complainant's interest is insufficient to justify the burden of processing a Complaint under Part 16" (Motion, at 15). But the Complainants' interest in maintaining the protections of Grant Assurances for the duration of the City's contractual commitment could not be more substantial.

As a preliminary matter, the Complaint alleges noncompliance under not one, but all of the Grant Assurances as a result of the City's conceded rejection of any compliance obligation after June 29, 2014. It also alleges that all but one of the Complainants, apart from the representative organizations, are Airport tenants.[6] That alone should be sufficient to establish their interest. "The fact that the Complainant is currently paying fees or rentals to the Respondent demonstrates that he is directly and substantially affected by any alleged noncompliance." *Royal Air, Inc. v. City of Shreveport*, *Louisiana,* docket nos. 16-02-06/FAA-2002-13063, Director's Determination, at 15 (January 9, 2004).

The FAA has recognized that "current" compliance means not just that an airport is not presently violating any Grant Assurances, but also that tenants and users are able to plan for the future. *See, e.g., Atlantic Helicopters, Inc. v. Monroe County, Florida*, docket nos. 16-07-12/FAA-2008-0250, Director's Determination, at 31 (September 11, 2008) ("[s]ponsors must provide aeronautical businesses that meet minimum standards with the

[5] Moreover, the City's citation of constitutional ripeness standards (Motion, at 13) is misplaced, as administrative agencies are not subject to the same requirements as an Article III court. *See, e.g., NAACP v. FCC*, 46 F.3d 1154, 1161 (D.C. Cir. 1995).

[6] The exception is an Airport user (Complaint, ¶ 9), which as such pays landing fees for its operations.

opportunity for occupancy with certainty of associated rights to conduct business for appropriate lengths of time, depending on investment requirements and associated costs").

That the City, now purportedly free from Grant Assurance obligations, has delayed taking further specific actions at SMO does not change the fact that its current position – that it has the right "to use the Airport Property as it chooses in its sovereign discretion, including for non-aviation purposes," *City of Santa Monica v. U.S., et al.,* no. 13-CV-8046 (C.D. Cal.), Complaint at § 2 – prevents Airport tenants and users from planning for a future in all but the shortest term. This situation may effectively force many of them to relocate from SMO, which would depopulate the facility and perpetuate a cycle of decline – exactly the outcome that the City wants and which the FAA must prevent. As the FAA recently observed, "an airport sponsor's federal obligations are not altered or suspended based on its intent and desire to close the airport." *De Vries v. City of St. Clair, Missouri*, docket nos. 16-12-07/FAA-2012-0744, Director's Determination, at 26 (May 20, 2014).

It is also not true that the FAA has no power under Part 16 to consider future events and consequences. While most Part 16 proceedings have emphasized current compliance issues, and the FAA commonly has declined to consider matters that are entirely speculative, the FAA also has made clear that it may address current practices that are likely to result in future violations – of which the City's position regarding its lack of obligations is a prime example. *See, e.g., JetAway Aviation LLC v. Board of Commissioners, Montrose County, Colorado*, docket nos. 16-06-01/FAA_2006-25185, Director's Determination, at 34 (November 6, 2006) (warning respondent that UNICOM frequency must be reclaimed by the airport from the existing FBO to which it had been assigned when a second FBO contract was awarded). Likewise, in *Town of Fairview, Texas v. City of McKinney, Texas*, docket no. 16-99-04, Director's Determination, at 17 (July 26, 2000), the FAA specified that it could hear a complaint which alleged that an airport's current noncompliance with wildlife mitigation requirements would lead to future hazards, so long as the complainant "demonstrate[d] a realistic danger of sustaining direct injury."[7]

The danger arising from Santa Monica's erroneous conclusion that it is no longer bound by any of the Grant Assurances is no less realistic. The history of the City's efforts to close SMO and to restrict its operations, as well as recent developments such as the fact that by the City's admission even the best case scenario under contemplation for the future of SMO leases is non-compliant three-year maximum terms – demonstrate that the City will use any absolution from Grant Assurance constraints to disadvantage Airport tenants and users. Thus, Complainants should not be further obliged to demonstrate how any of the various proposals previously or currently under consideration by the City might affect

[7] This standard is at a minimum consistent with federal court decisions, which hold that future injuries can be cognizable. *See, e.g., Susan B. Anthony List v. Driehaus*, 134 S.Ct. 2334, 2341 (2014) ("[a]n allegation of future injury may suffice if the threatened injury is certainly impending, or there is a substantial risk that the harm will occur") (quotation marks omitted); *Amador County, California v. Kempthorne*, 592 F.Supp.2d 101, 105 (D.D.C. 2009). In any case, as for ripeness, the standing requirements that apply to administrative agencies are less strict than those that apply to Article III courts; the City is wrong (*see* Motion, at 13) to suggest otherwise. *See, e.g.*, *Envirocare of Utah, Inc. v. NRC*, 194 F.3d 72, 74 (D.C.Cir. 1999).

them individually when implemented. The City has already rejected all of its compliance obligations and made clear that going forward its intent is to "starve" SMO, even if it has not yet selected the specific tools by which it will do so.

Finally, the FAA also has made clear that even if an airport nominally is in current compliance with the Grant Assurances, if a compliance matter may arise in the future but easily evade review, it may be addressed by the FAA preemptively in a Part 16 proceeding. *See, e.g., Royal Air, Inc. v. City of Shreveport, Louisiana*, docket nos. 16-02-06/FAA-2002-13063, Director's Determination, at 17 ("[t]he focus is on current compliance, but a necessary part of current compliance is a sponsor's actions in carrying out its federal obligations. The Respondent's former actions, as well as current actions, shape its airport compliance efforts regardless of subsequent developments in tenancy at the airport. The typical standard for a claim of mootness is whether a matter is capable of repetition, but evading review. Under this premise, the Director cannot find that the complaint is moot"). To the extent that the City's actions may have the effect of driving away tenants and users, the same concerns apply here.

III. Good Faith Effort to Resolve

Complainants have fulfilled the pre-complaint resolution requirements of 14 C.F.R. § 16.21. Part 16 "does not require any particular informal resolution method. Additionally, Part 16 … does not state that efforts to resolve an issue must begin or conclude at any given point." *Consolidated Services Engineers & Constructors, Inc. v. City of Palm Springs, California*, docket nos. 16-03-05/FAA-2003-15433, Director's Determination, at 23 (June 10, 2004).

Complainants' efforts began long before the present filings with efforts to dissuade the City from its erroneous interpretation of its obligations, including the National Business Aviation Association's March 24, 2014 letter to the City's Mayor and Council which warned that the restrictions then under consideration would violate the City's continuing Grant Assurance obligations. *See* Exhibit 14 to the Complaint. This letter was ignored at the time – and was ignored again by the Motion.

Complainants' ensuing pre-complaint efforts with the City, *see* Exhibits 11, 12 and 13 to the Complaint, commenced with an offer to discuss unconditionally a range of options for resolution:

> I want to afford the City the opportunity to discuss any possible resolution of the Grant Assurance duration issue. My clients and I are willing to meet with City representatives or to engage in any form of dialogue that might be useful. If the City believes the involvement of a third party, such as a mediator or the FAA itself, would be helpful, I would certainly consider it.

Exhibit 11, at 2. This was met with what can only be described as a non-response, *see* Exhibit 12, reciting the various measures then under evaluation by the City but evincing no serious willingness to address the specific issue on the table – the duration of Grant Assurances.

The City now complains that the final letter from Complainants' counsel was not in good faith because it urged the City to accept its Grant Assurance obligations, but this misses the point: Complainants did not and do not have the authority to alter the duration of those obligations, a power residing only with the FAA. Nor could Complainants make commitments binding the many other Airport tenants and users. Complainants' only options for resolution were to convince the City that it was wrong or to convince it to engage with the FAA, both of which proved unavailing.

As noted in the Complaint, Part 16 Complainants are not required to engage in continued one-sided efforts to resolve a dispute with officials who have "for all practical purposes" made clear that they will not comply with the Grant Assurances. *See Bombardier Aerospace Corp. and Dassault Falcon Jet Corp. v. City of Santa Monica, California*, docket no. 16-03-11, Director's Determination, at 23 (January 3, 2004).

The City has been intransigent on the subject of Grant Assurance duration since it first surfaced, and it is outlandish to argue that the Complainants did not show good faith in undertaking an additional effort, albeit futile from the inception, to at least have the subject discussed before the City's response made clear that it had no interest in doing so.

A final point is worth noting here. In its discussion of "good faith," the City states:

> Even if the CITY were to [renounce the 2014 date] it would not allow Complainants "to understand and plan for the future", their alleged concern in their June 11, 2014 letter to the CITY ... given that such a renunciation would not guarantee that the Complainants would be offered tenancies at SMO until 2023, or even beyond 2015.

Motion, at 15. Whether willful or unknowing, this passage perfectly encapsulates what is defective with the City's entire Motion: it is based on the assumption that Complainants are pursuing an entirely different claim, and not one focused solely on the wrong the City has already perpetrated in rejecting its Grant Assurance obligations. The Complainants are indeed entitled to "understand and plan for the future" based on a 2023 expiration date for those Grant Assurances, and have initiated this proceeding to allow them to do that.

CONCLUSION

At page 15 of its Motion, the City again attempts to reframe this case by offering an inapt analogy involving a hypothetical arrest for possession of marijuana. In that vein, Complainants would suggest an alternative scenario a bit more on point: the City is in a bank brandishing a gun, and announcing that there is nothing that can stop it from holding up the place. It now argues that it cannot be arrested because it has not yet decided which teller it will assault and which banknotes it will take. That would not work as a matter of criminal law, and by analogy it does not work under Part 16.

To summarize:

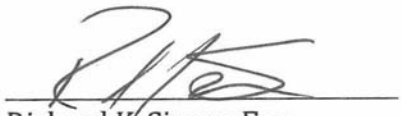
1. The City has unilaterally determined, and does not now deny, its position that it is no longer obligated by federal Grant Assurances.

2. The FAA has the jurisdiction, authority, and responsibility under 14 C.F.R Part 16 to address a dispute as to when Grant Assurance obligations end.

3. The FAA likewise has the jurisdiction, authority, and responsibility under 14 C.F.R. Part 16 to find that the City's rejection of all Grant Assurances is itself a violation of those obligations and the grant agreements that it signed.

4. The Complainants, as tenants and users of the Airport, have standing to seek redress in this proceeding. The City's rejection of all Grant Assurances already has had, and will continue to have, direct and substantial effects on them.

These facts, and this Complaint, meet the requirements for Part 16 review and relief. The Respondent's Motion should be denied pursuant to 14 C.F.R. § 16.26(c)(4). The FAA should require the Respondent to answer the Complaint and proceed to promptly consider and rule upon the substance of the complaint, given the import and urgency of the issue for the Complainants and the other tenants and users of the Airport.



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Certificate of Service

I hereby certify that I have this day caused the foregoing answer to be served on the following persons by first-class mail with a courtesy copy by electronic mail:

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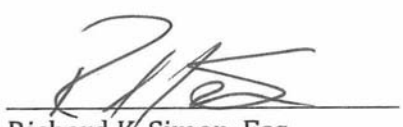
Dated this 28th day of August, 2014.



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