U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of Airport Compliance
and Management Analysis

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August 15, 2016

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Re: Docket No. 16-14-04

Dear Counsel:

Enclosed is a copy of the final decision and order of the Federal Aviation Administration (FAA) with respect to the above-referenced matter.

The FAA Associate Administrator for Airports affirms the Director's Determination, and concludes that the Director's analysis and conclusions are supported by a preponderance of reliable, probative, and substantial evidence, and is consistent with applicable law, precedent, and FAA policy.

The reasons for upholding the Director's Determination are set forth in the enclosed final agency decision.

Sincerely,

Kevin C. Willis

Kevin C. Willis
Acting Director, Office of Airport Compliance
and Management

Enclosure

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 15, 2016, I caused to be emailed and placed in the United States mail (first class mail, postage paid) a true copy of the Final Agency Decision, to:

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Copy to:

FAA Part 16 Airport Proceedings Docket

FAA Airport Compliance and Management Analysis, ACO-100

Cynthia L. Powell
Administrative Officer
Office of Airport Compliance
and Management Analysis

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

National Business Aviation Association, Krueger Aviation, Inc., Harrison Ford, Justice Aviation, Kim Davidson Aviation, Inc., Aero Film, Youri Bujko, James Ross, Wonderful Citrus LLC and Aircraft Owners and Pilots Association **Complainants** **V.** **City of Santa Monica, California** **Respondent**	**Docket No. 16-14-04**

ASSOCIATE ADMINISTRATOR FOR AIRPORTS

FINAL AGENCY DECISION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) Associate Administrator for Airports on appeal filed by City of Santa Monica, California, (City/Respondent) owner, sponsor, and operator of the Santa Monica Airport (SMO). The City appeals the Director's Determination of December 4, 2015 issued by the Director of the FAA Office of Airport Compliance and Management Analysis, pursuant to the *Rules of Practice for Federally Assisted Airport Enforcement Proceedings* found in Title 14 Code of Federal Regulations (C.F.R.) Part 16.

On Appeal, the City asserts that the Director erred in his analysis and the Director's Determination must be reversed, and contends that its Airport Improvement Program (AIP) grant assurance obligations expired in 2014. [FAA Item 22, pages 10 and 33]. The Complainants filed a Reply to the City's Appeal and argue that "the City's appeal and accompanying petition should be denied and the Director's Determination should be affirmed, including the finding therein that the City is obligated by the Grant Assurances through August 27, 2023." [FAA Item 24, page 15].

The Associate Administrator on appeal considers issues accepted in the Director's Determination using the following analysis: (1) Are the findings of fact each supported by a preponderance of reliable, probative, and substantial evidence contained in the record; (2) Are conclusions made in accordance with law, precedent and policy; (3) Are the questions on appeal substantial; and (4) Have any prejudicial errors occurred. [14 C.F.R. § 16.33(e)].

In arriving at a final decision on this Appeal, the FAA has re-examined the record, including the Director's Determination, the administrative records supporting the Director's Determination, the City's Appeal, and the Complainants' Reply in light of applicable law and policy, and which comprises the attached FAA Index of Administrative Record. Based on this reexamination, the FAA concludes that the Director's Determination is supported by a preponderance of reliable, probative, and substantial evidence, and is consistent with applicable law, precedent, and FAA policy. The Associate Administrator finds that the City's Appeal does not contain persuasive arguments sufficient to reverse any portion of the Director's Determination. Accordingly, the Associate Administrator affirms the Director's Determination.

II. THE PARTIES AND SUMMARY OF THE DIRECTOR'S DETERMINATION

A. Airport

SMO is a public-use airport owned and operated by the City. SMO serves the role of a general aviation airport capable of accommodating a wide range of business and personal aircraft, including corporate and business jets. The 227-acre airport has approximately 269-based aircraft with approximately 452 average aircraft operations per day. The airport is located in a congested air traffic area and serves as a reliever airport for Los Angeles International Airport (LAX), which is located seven miles to the south.

FAA records indicate that the planning and development of SMO has been financed, in part, with funds provided by the FAA under the Airport Improvement Program (AIP), authorized by the Airport and Airway Improvement Act of 1982 (AAIA), as amended, Title 49 United States Code (U.S.C.) § 47101, *et seq*. Between 1985 and 2003, SMO received approximately $9.7 million in Federal airport development assistance.[1]

B. Complainants

The Complainants include tenants of SMO and organizations with members who are aviation users of the airport. The Complainants desire clarification concerning the expiration date of SMO's grant assurance obligations as determined by the FAA. [FAA Item 1]. The Complainants, as provided in the Complaint, are:

The National Business Aviation Association, Inc. (NBAA) is a District of Columbia corporation that represents the interests of companies that operate aircraft. According to the NBAA, its membership includes more than 10,000 companies that operate aircraft in connection with their business or are otherwise involved in business aviation. These entities can or do utilize SMO including but not limited to Krueger Aviation, Inc. and Kim Davidson Aviation, Inc.

Krueger Aviation, Inc. (Krueger) is a California corporation engaged in the sale and brokerage of aircraft at SMO, where it has been a tenant for more than 40 years. Krueger currently occupies approximately 10,000 feet of office and hangar space on two acres that it leases from the City on the south side of SMO. It leases office and hangar space to seven sub-tenant businesses and maintains tie-down space for approximately 30 aircraft.

Harrison Ford is an actor, businessman, and pilot. He has been a SMO tenant for 10 years, basing both fixed-wing (piston and jet) and rotor aircraft in his north-side hangar. Mr. Ford has testified

[1] The Associate Administrator is not addressing any surplus property obligations since these types of obligation are not at issue in this case.

before Congress as an advocate for general aviation and regularly flies missions in support of humanitarian causes.

Justice Aviation, a California corporation, is a full service flight school and aircraft rental facility located on the south side of SMO. A tenant for 21 years, Justice Aviation currently employs eight flight instructors and maintains between 9 and 11 aircraft for instruction and rental.

Kim Davidson Aviation, Inc., a California corporation, is an FAA certified Repair Station and a factory authorized Cirrus Aircraft service center located on the south side of SMO. It has been a tenant since 1982, employing a staff of 11.

Aero Film is a California limited liability company engaged in the production of television commercials. It is based at SMO, where it maintains offices and a hangar for two aircraft, a Cessna Citation II and an MD 500 helicopter, both of which are used in its business. Aero Film has been a tenant for 11 years.

Youri Bujko, a tenant since 2008, is the owner and pilot of two aircraft, a Mooney Super M20 E and a Cessna Crusader, which he maintains for both business and personal use on the south side of SMO.

James Ross is a recreational flyer who owns a Cessna 170, based in tie-down space on the south side of SMO. He has been a tenant for 18 years.

Wonderful Citrus, LLC (formerly Paramount Citrus LLC)[2], together with its affiliates, is the largest vertically integrated citrus business in the United States. Paramount Citrus Aviation, based in Bakersfield, California, is the business department of the agricultural based companies owned and operated by Wonderful Citrus LLC and its related entities. Wonderful Citrus LLC and Paramount Citrus Aviation are jointly referred to herein as "Wonderful." Wonderful has been a user of SMO for more than 10 years, and logs approximately 235 monthly operations at SMO in support of its business operations. Wonderful relies on SMO as a vital hub for employee travel to multiple destinations across the western United States.

The Aircraft Owners and Pilots Association, Inc., (AOPA) is an independent, not-for-profit education and advocacy association incorporated in New Jersey and headquartered in Frederick, Maryland. According to AOPA, it is the world's largest aviation membership association, representing approximately 370,000 pilots who fly for personal and business reasons. According to AOPA, more than 6,000 of its members are within a 25-mile radius of the City, and many of those members base their aircraft at SMO, including, but not limited to, Harrison Ford, Youri Bujko and James Ross. AOPA acts as their representative in this proceeding, consistent with FAA precedent. *See, e.g., Bombardier Aerospace Corp. v. City of Santa Monica,* Docket No. 16-03-11, Director's Determination, at 1 n.1 and 22 (January 3, 2005).

C. Summary

On December 4, 2015, the Director, Office of Airport Compliance and Management Analysis, determined that the City remains obligated by the AIP grant assurances until August 27, 2023. The Director based this finding on the acceptance of AIP Grant Amendment No. 2 (Amendment No. 2) on August 27, 2003, which resulted in additional AIP funds being provided to the City. The Director found that this acceptance of the FAA offer of additional grant funds, after the project had been completed, triggers the

[2] On January 4, 2016, counsel for the Complainants filed a Notice of Complainant Name Updates advising that Paramount Citrus LLC has changed to Wonderful Citrus, LLC. The caption to this case has been revised to reflect this name change, and to correctly identify NBAA. See FAA Item 23.

grant assurances to remain in force for 20 years thereafter, expiring on August 27, 2023. FAA Item 20, page 19].

III. PROCEDURAL HISTORY

On July 2, 2014, the FAA received a Part 16 Formal *Complaint* alleging that the City violated 49 U.S.C. § 47107(a) and airport Grant Assurances. [FAA Item 1]. On July 17, 2014, the FAA issued the *Notice of Docketing*. [FAA Item 2]. On August 14, 2014, the City filed a *Motion to Dismiss* and on August 28, 2014, the Complainants filed an *Answer to the Motion to Dismiss*. [FAA Items 3 and 4]. On October 20, 2014, the City filed its *Answer* and on October 30, 2014, The Complainants filed a *Reply to the Respondent's Answer to the Complaint.* [FAA Items 5 and 6]. On November 11, 2014, the City filed a *Rebuttal to the Reply Brief of Complainants,* and on February 19, 2015, the FAA issued a notice requesting additional information from the parties regarding *useful life*. [FAA Items 7 and 8].

On March 25, 2015, the FAA received information from the Complainants in response to the February 19th notice requesting additional information. [FAA Item 9]. On April 1, 2015, the FAA received information from the City based on the February 19, 2015 request. [FAA Item 10]. On August 6, 2015, a *Notice of Extension of Time* to issue the Director's Determination to August 21, 2015 was issued. [FAA Item 16]. This initial extension was followed by three other extension notices on August 21, September 21, and October 16, 2015. [FAA Items 17, 18, and 19].

On December 4, 2015, the FAA issued the Director's Determination, and on December 23, 2015, the City filed a *Request for Hearing*. [FAA Items 20 and 21A].[3] On January 6, 2016, the Complainants' filed a *Reply to City of Santa Monica's Request for Hearing*, and on January 8, 2016, the City filed its *Appeal* to the Director's Determination. [FAA Items 21B and 22]. That same day, the City filed its *Respondent City of Santa Monica's Petition to Supplement*. [FAA Item 22A]. On January 28, 2016, the Complainants filed their *Reply of the Complainants to Respondent's Appeal from the Director's Determination and to Respondent's Petition to Supplement the Record on Appeal*. [FAA Item 24]. On March 28, 2016, a *Notice of Extension of Time* to issue the Final Agency Decision to June 15, 2016 was issued. [FAA Exhibit 25] This initial extension was followed by two other extension notices on June 22 and August 1, 2016. [FAA Items 26 and 27].

IV. BACKGROUND

On January 31, 1984, the City and the FAA entered into a Settlement Agreement (1984 Agreement) setting forth the terms and conditions under which the City would continue to operate SMO. Under the Agreement, the City agreed to operate and maintain SMO without derogation of its use as a reliever airport until July 1, 2015. [FAA Item 1, Exhibit 5]. The 1984 Agreement, by its terms, did not address obligations after its expiration nor did it release the City from its AIP Grant or Surplus Property Act obligations. On June 29, 1994, the City applied for and accepted an AIP grant from the FAA for $1,604,700 for planning, airport development, or noise program implementation. [FAA Item 3 Exhibit A, page 2]. The grant was issued in 1994 under AIP Grant No. 3-06-0239-06. The projects under the grant were completed in two phases, with final inspection in August 1996 (Phase I). [FAA Item 13].

By letter dated August 2, 1999, the City asked to amend Grant No. 3-06-0239-06 to reflect modifications to the original scope of work under Phase I. The letter indicated that the *"request would not result in a*

[3] The City filed a request for a hearing under 14 C.F.R. Part 16. The Complainants opposed the City's request for a hearing. On January 21, 2016, the FAA denied the City's request. [FAA Item 21C].

change in the total project budget cost under the grant." [FAA Item 14]. On November 8, 1999, the City executed Amendment No. 1. [FAA Item 5, Exhibit 2]. By letter dated September 27, 2002, the City requested yet again to amend Grant No. 3-06-0239-06 (II) to *"increase participation amount by $240,600 to a total of $1,845,300 to reflect increased cost and changed conditions that occurred during construction."* [FAA Item 5, Exhibit 4]. However, the FAA replied to the City and indicated that the 1994 grant was "financially and administratively closed." [FAA Item 12].

On May 7, 2003, the City submitted a second letter renewing the request for additional funds for the project. Notwithstanding that this request was being withheld pending the outcome of an FAA Notice of Investigation, the City "implore[d] the FAA to reconsider this matter and approve" the amendment, so the funds can be used to enhance and maintain the Santa Monica Airport. [FAA Item 11]. As a result, the FAA agreed to *"reopen the grant to amend the grant agreement, thereby increasing the maximum U.S. obligation."* [FAA Item 12]. Accordingly, the FAA offered the City a grant amendment that increased the federal obligation to $1,845,300. The City accepted the offer on August 27, 2003. [FAA Item 5, Exhibit 2]. The amendment provided, in part,

> The maximum obligation stated on Page 2, condition 1, is hereby increased by $240,600.00, from $1,604,700.00 to $1,845,300.00. All other terms and conditions of the Grant Agreement remain in full force and effect. [FAA Item 5, Exhibit 2].

The Final Construction Report, Airport Improvements, Santa Monica Airport, AIP Project No.3-06-0239-06 (II) provided the timing for Phase II and included a final inspection of the completed work on March 27, 2002. [FAA Item 13].

V. APPLICABLE FEDERAL LAW AND FAA POLICY

The Federal role in civil aviation is augmented by various legislative actions that authorize programs for providing Federal funds and other assistance to local communities for the development of airport facilities. In each such program, the airport sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely and efficiently and in accordance with specified conditions. Commitments assumed by airport sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance, as well as ensuring the public fair and reasonable access to the airport.

A. The Airport Improvement Program (AIP)

Title 49 U.S.C. § 47101, *et seq.,* provides for federal airport financial assistance for the development of public-use airports under the AIP established by the Airport and Airway Improvement Act of 1982, (AAIA) as amended. Title 49 U.S.C. § 47107, *et seq.,* sets forth assurances to which an airport sponsor agrees as a condition of receiving federal financial assistance. Upon acceptance of an AIP grant, the assurances become a binding contractual obligation between the airport sponsor and the federal Government. The assurances made by airport sponsors in AIP grant agreements are important factors in maintaining a viable national airport system.

B. Airport Sponsor Assurances

As a condition precedent to providing airport development assistance under AIP, 49 U.S.C. § 47107, *et seq.,* the Secretary of Transportation and, by extension, the FAA must receive certain assurances from the airport sponsor. Title 49 U.S.C., § 47107(a) sets forth the statutory sponsorship requirements to which an

airport sponsor receiving federal financial assistance must agree, the FAA has also identified assurances that are necessary to carry out the program. The FAA has statutory authority to enforce compliance with the sponsor assurances.

FAA Order 5190.6, *FAA Airport Compliance Manual* (Order), provides the assurances for sponsors and policies and procedures to be followed by the FAA in carrying out its functions related to compliance with federal obligations of airport sponsors. The FAA considers it inappropriate to provide federal assistance for improvements to airports where the benefits of such improvements will not be fully realized for the duration of their useful life or due to inherent restrictions on aeronautical activities.

Assurance (B)(1), which addresses the duration of the grant assurances, provides that "the terms, conditions and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of the acceptance of a grant offer of federal funds for the project. However, there shall be no limit on the duration of the assurance against exclusive rights or the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurances shall be as specified in the assurance."

C. Appealing the Director's Determination

A party adversely affected by the Director's Determination may file an appeal with the Associate Administrator within 30 days after the date of service of the initial determination. [14 C.F.R. § 16.33(c)].

The Associate Administrator does not consider new allegations or issues on appeal unless finding good cause to do so. [14 C.F.R. § 16.33(f)]. Review by the Associate Administrator is limited to an examination of the Director's Determination and the administrative record upon which such determination was based. Failure to raise 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.

FAA's Responsibility with Regard to an Appeal

Pursuant to 14 C.F.R. § 16.33(b)(1), the Associate Administrator will issue a final decision on appeal from the Director's Determination, without a hearing, where the complaint is dismissed after investigation; a hearing is not required by statute and is not otherwise made available by the FAA; or the FAA provides opportunity for a hearing to the respondent and the respondent waives the opportunity for a hearing as provided in subpart E of Part 16. In such cases, the Associate Administrator will use the following analysis:

(1) Are the findings of fact each supported by a preponderance of reliable, probative, and substantial evidence contained in the record?
(2) Are conclusions made in accordance with law, precedent, and policy?
(3) Are questions on appeal substantial?
(4) Have any prejudicial errors occurred? [14 C.F.R. § 16.33(e); *see also, e.g.*, Ricks v Millington Municipal Airport, FAA Docket No. 16-98-19, December 30, 1999, Final Decision and Order, p. 21].

VI. ISSUES ON APPEAL

The Associate Administrator has identified the following issues to be reviewed on Appeal:

Issue 1 – Whether the Director erred in finding that the City by entering into a 2003 Amendment to the 1994 grant agreement, extended the City's grant assurance obligations from 2014 to 2023;

Issue 2 – Whether the Director erred in finding that the Complainants demonstrated that they were "directly and substantially affected," as required by 14 C.F.R § 16.23(a);

Issue 3 – Whether the Director erred in finding that Complainants adequately pleaded a claim under Part 16 as required by 14 C.F.R. § 16.23(b)(1); and

Issue 4 – Whether the Director erred in finding that the Complainants complied with the requirement under 14 C.F.R § 16.21 to engage in good faith efforts to resolve their complaint informally. [FAA Item 22, pages ii-iii].

VII. ANALYSIS AND DISCUSSION

On Appeal, the City argues that the Director's Determination "is contrary to law, precedent, and policy and is arbitrary and capricious and an abuse of discretion." Each of the issues identified in Section VI above is addressed in this Section, and in addition the Associate Administrator is addressing, at the outset of this Analysis and Discussion, the City's *Petition to Supplement* the record. [FAA Items 22A and 22B].

On January 9, 2016, the City filed a *Petition to Supplement* the record. The City requests that it be permitted to supplement the record with a declaration of Susan McCarthy, former City Manager, and requests leave to supplement its petition to include a declaration of Jeff Mathieu, former Airport Director. On January 13, 2016, the City filed a *Notice of Filing* transmitting the declaration of Jeff Mathieu. [FAA Items 22A and 22B].

The City asserts the declarations from former City employees declare what they "actually understood in reviewing and executing the 2003 grant amendment." The City argues that good cause exists to allow this new evidence, and that these declarations represent the "first opportunity the City has to refute the Director's misstatement that the City 'knew or should have known' that accepting new funds would restart the date of its grant assurances." [FAA Items 22A and 22B].

In response, Complainants assert that the City has failed to show any good cause for the submission of these declarations at this late date, and the City's request should be denied. Complainants claim the "new evidence proffered by the City is irrelevant because the City's contemporaneous-or even earlier-understandings of the significance of its actions in 2003 are beside the point." [FAA Item 24, page 2].

Title 14 C.F.R. §16.33(f) states that "any new issues or evidence presented in an appeal or reply will not be considered unless accompanied by a petition and good cause found as to why the new issue or evidence was not presented to the Director," and that "such a petition must: (1) Set forth the new matter; (2) Contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable; and (3) Contain a statement explaining why such new issue or evidence could not have been discovered in the exercise of due diligence prior to the date on which the evidentiary record closed."

Upon review of the City's submissions, the Associate Administrator finds that the declarations by former City employees McCarthy and Mathieu re-state the position taken by the City that it understood the 2003 grant to be an amendment and not a new grant. In so doing, the declarations clarify the position of the City, and thus the Associate Administrator finds good cause to consider these declarations. Therefore, the City's petition is granted, and the declarations are admitted into the record.

Issue 1 – Whether the Director erred in finding that the City by entering into a 2003 Amendment to the 1994 grant agreement, extended the City's grant assurance obligations from 2014 to 2023.

The Associate Administrator has organized the City's arguments for Issue 1 under four primary sub-issues: (a) Plain Language; (b) Consideration; (c) New Obligation Akin to New Grant, and (d) Ambiguity.

a. Plain Language

On Appeal, the City contends the "the plain language of the agreements makes clear that the City's grant obligations expired in 2014." [FAA Item 22, page 10]. The City argues that the "proceeding should begin and end with the plain language of the agreements the City signed with the FAA," and that the "contractual language provides in no uncertain terms that any obligations the City incurred by executing the relevant agreements expired in 2014." [FAA Item 22, page 11]. The City claims that Amendment No. 2, executed in 2003, did not change matters, and expressly left the expiration date in place. [FAA Item 22, page 12].

In their Reply, Complainants point out that the "City does not dispute that the duration of the obligation period is not explicitly addressed by the 2003 grant modification, nor did any language in the 1994 grant agreement establish 2014 as an unalterable expiration date." Additionally Complainants argue that "the City's language-based argument for the interpretation of the 2003 grant modification is not compatible with the factual record or the law," and "instead, the FAA must determine how language in the modification should be interpreted." [FAA Item 24, page 4].

The Associate Administrator is not persuaded that the plain language of the grant amendment as asserted by the City establishes the grant expiration in 2014. On the contrary, a plain reading of the grant amendment language that "All other terms and conditions of the Grant Agreement remain in full force and effect" is reasonably read to apply to the Grant Assurance (B)(1) Duration and Applicability, and the conclusion that the City's grant assurance obligation expires in 2023. [FAA Item 3 Exhibit A].

The Grant Assurance (B)(1)Duration and Applicability Assurance in addressing the duration of the grant assurances provides that: The terms, conditions and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of federal funds for the project. However, there shall be no limit on the duration of the assurances against exclusive rights or the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be as specified in the assurance.

As the Director properly noted, Assurance (B)(1) does not provide a time-certain date on which the assurances expire, but rather provides the methodology for determining that date. And more importantly, it reflects the FAA's expectation that the benefit to the public extends, in general, for approximately 20 years. [FAA Item 20, page 13].

The Associate Administrator finds that the Director did not err in finding that the City by entering into a 2003 Amendment to the 1994 grant agreement, extended the City's grant assurance obligations from 2014 to 2023. As discussed below, the acceptance of a new grant offer restarts the 20-year clock.

The City in its Appeal also claims that the 1994 AIP grant was consistent with the 1984 Settlement Agreement. [FAA Item 1, Exhibit 5]. The City states that in accordance with the 1984 Settlement Agreement, the 1994 Grant Agreement did not "extend or alter the obligation of the City to operate the Airport," and "it continued to permit the City to discontinue or otherwise modify operation of the airport as of July 1, 2015 to serve the best interest of its residents." [FAA Item 22, pages 11 and 12]. The City adds that "given the June 30, 2015 termination date of the 1984 Agreement, the City considered one of the 1994 Grant Agreement's most important terms and conditions to be that any obligation imposed by the Agreement would expire in 2014" and that "Amendment No. 2 made clear that this 2014 expiration date remained in full force and effect." [FAA Item 22, page 13].

In further support, the City relies on the declarations submitted by the former City Manager Susan McCarthy and the former Airport Director Jeff Mathieu. Ms. McCarthy in her declaration explains that she signed Amendment No. 2, and that it was the City's policy "to not take any action that could extend the time beyond July 1, 2015 that the City would be obligated to operate the Airport." [FAA Item 22A].

Mr. Mathieu, in his declaration, references a City Staff Report that states "Any acceptance of funds for this grant will not bind the City to operate the airport beyond the 2015 date established in the 1984 Agreement with the FAA." Mr. Mathieu declares that had he been aware that an amendment to the 1994 grant agreement would further obligate the City to operate the Airport past the expiration of the 1984 Agreement, he would have taken steps to make sure that City staff not execute such an amendment. [FAA Item 22B].

Complainants contest the City's position that the 1984 Agreement "represented the definite end of the City's legal obligation to operate the Airport." [FAA Item 24, page 3]. Complainants point to language in the Director's Determination for its position that "federal funding of program improvements intended to further this Agreement, executed prior to July 1, 1995' shall not extend the City's obligation to operate the Airport. Indisputably, the 2003 grant modification was executed after July 1, 1995." [FAA Item 24, page 4, and Director's Determination, Item 20, page 18].

The Associate Administrator found Ms. McCarthy's and Mr. Mathieu's respective declarations helpful in clarifying the City's position that the funds received in 1994 did not extend the City's obligation to operate the airport beyond July 1, 2015, the date set by the 1984 Settlement Agreement. However, the fact remains that the City executed an amendment in 2003 well after the July 1, 1995 date set out in the 1984 Settlement Agreement. The Associate Administrator is not persuaded by the City's argument that the 1984 Agreement arbitrarily controlled the expiration date of an amendment to the 1994 grant when it was signed eight years after the July 1, 1995 recognized date.

The 1984 Settlement Agreement itself makes clear that only those grant agreements executed prior to July 1, 1995 would not extend or alter obligations. [FAA Item 1, Exhibit 5, pages 8-9]. The amendment at issue here concerns the 2003 AIP grant.

Against this background, the Associate Administrator finds that the 1984 Agreement does not set or otherwise limit the expiration date or consideration of the 2003 grant amendment to 2014.

b. Consideration

On Appeal, the City challenges the Director's finding relative to the need for the City to provide something in exchange for the additional funds provided by FAA, namely an exchange of consideration. The City claims that the "Director erred in presuming that in 2003 consideration was necessary or even relevant." The City asserts that the Director failed to consider the possibility that, under general principles of contract law, a modification to a preexisting contract of this sort may be affected without consideration. [FAA Item 22, page 14]. The City contends that the Supreme Court decisions relied on by the Director "do not, however, stand for the proposition that each and every payment of federal funds must be supported by consideration," but rather they "instead describe the limits of the federal government's power to impose conditions on the recipients of federal funds." [FAA Item 22, page 15].

The City asserts that "even if the City were required to provide consideration in exchange for the FAA's increase in funding, the Director erred in concluding that this consideration must have been the City's acceptance of an additional nine years of grant assurance obligations." The City states its promise to "use the reimbursement funds to 'enhance and maintain the Santa Monica Airport' was itself beneficial to the FAA." [FAA Item 22, page 16].

The Complainants contend that the Director was correct to conclude that the 2003 grant modification required consideration, and that to the extent it did, the 2023 date was the consideration. The Complainants claim that "it is well established that federal government officers lack authority to enter into contracts, including modifications, under which the government receives nothing." [FAA item 24, page 8]. In further support of their position, the Complainants rely on State law in claiming that "in California it remains mandatory that contract modifications be accompanied by consideration." [FAA Item 24, page 9].

The Associate Administrator does not find that the Director erred when he concluded that there was consideration for the 2003 grant amendment. [Item 20, page 16]. The Associate Administrator agrees with the Director that the 1994 old grant had been closed and the second amendment was mutually agreed to and signed by both parties, and that there was an AIP grant offer, acceptance and an *exchange of consideration* (emphasis added).

As discussed in the Background section, the FAA closed the 1994 grant in 2001 and only after the City "implored" the FAA to provide the funds did the FAA agree to the City's request for additional funds. The receipt of these additional funds is the critical factor here. The Director properly noted "it is clear what consideration the FAA provided - additional funding," for new infrastructure, and simply continuing to adhere to the grant assurances using the date of the award of the original grant would provide no new consideration to support the additional funds provided. Even the City gives tacit acknowledgment that consideration could be required in exchange for the FAA's increase in funding, while disagreeing on the form of the consideration. [FAA Item 22, page 16].

The Associate Administrator finds that the Director did not err in finding that the extension of the grant assurance obligations until 2023 was appropriate consideration in exchange for additional federal funds provided to the City.

c. New Obligation Akin to New Grant

On Appeal, the City challenges the Director's premise that Amendment No. 2 was akin to a new grant, rather than a mere modification of the existing grant agreement. The City explains that "an examination of the panoply of laws, policies, practices, precedent, and guidance regarding FAA grant assurances reveals no category of modification 'akin to a new grant.' Nothing in the grant assurances themselves, or in any agency guidance materials, refer to such a concept." [FAA Item 22, page 23]. The City states that "no where does it indicate that, by simply increasing funding for an existing grant, such an amendment may in fact be 'akin to a new grant.'" [FAA Item 22, page 24]. The City claims that the FAA's "omissions [in not reporting about the grant Amendment No. 2 in the new AIP Grant Awards or in the Grant Histories database] confirm that the agency did not consider the City to have been awarded a new grant or anything akin to a new grant in 2003, when the parties executed Amendment No. 2." [FAA Item 22, page 25].

The Complainants dismiss this claim as "much ado about nothing," and that it was "presumably not the Director's intent to suggest the existence of or create a new FAA funding category." [FAA Item 24, pages 10 and 11].

The Associate Administrator agrees with the Complainants' position on this sub-issue. In no case does the Director's one reference to the word "akin" in the phrase that "the Second Amendment was a new obligation akin to a new grant" to mean the Director was creating a new category of grant modification. The plain meaning of the word "akin" is similar or related, and that is what the Associate Administrator surmises was the Director's intent in noting that the 2nd Amendment was a new obligation akin to a new grant.

The Associate Administrator concurs with Director's position that a new obligation of funds via a second amendment that was mutually agreed to and signed by both parties, was an AIP grant offer, acceptance and an exchange of consideration. The Associate Administrator also wants to make clear that in no case did the Director's Determination announce an abrupt and arbitrary change in the FAA's treatment of grant obligations, and there is no requirement for notice and comment as argued by the City.

The FAA's concurrence to increase the federal investment into SMO was done through a grant amendment to a re-opened AIP grant. This amendment did not have its own expiration date, but rather made direct reference to the required AIP language for such grants, which specifically refers to the useful life of the improvements not to exceed 20 years. The issue then is to discuss the impact of the new 2003 AIP grant amendment upon the expiration date to which the City would be obligated. As noted in the grant agreement itself, the date is determined by the (1) useful life of the project and (2) the not-to-exceed date of no more than 20 years from acceptance of the grant offer.

The AIP grant and funds offer referenced here is the 2003 offering. The Associate Administrator finds that the Director properly concluded that the grant assurance obligation maximum duration is 20 years from the date of acceptance of the grant – August 27, 2023, rather than the longer useful life date of March 27, 2027.[4]

d. Ambiguity

On Appeal, the City claims that the Director's Determination was premised on a misapplication of basic contractual principles permitting the FAA to resolve any ambiguity in its favor. The City states that "here

[4] The Director's useful life finding was not raised on appeal, and thus is not at issue in this decision.

the FAA drafted both the 1994 Grant Agreement and Amendment No. 2," and that "to the extent that these agreements create ambiguity as to the duration of the City's grant obligations, the City's reasonable interpretation must prevail over that of the FAA." [FAA Item 22, pages 17 and 18].

The City takes the position that the Director's "newfound rule that certain amendments to grant offers will again trigger the grant assurances is ambiguous and procedurally improper," and "the ambiguity inherent in the Director Determination's attempt to shoehorn Amendment No. 2 into the category of "new grants' is illustrated by its differing treatment of Amendment No. 1." [FAA Item 22, pages 26 and 27]. The City contends that the Director suggested that Amendment No. 1, unlike Amendment No. 2, would not have restarted the Assurance B(1)'s 20-year clock. [FAA Item 22, page 27, citing to Director's Determination, at page 16], and the City asserts that the Director cited "two separate and not necessarily congruent rationales for this distinction: (1) Amendment No. 1 continued to provide that there would be 'additional work performed'; and (2) Amendment No. 1 'add[ed] no funds.'" [FAA Item 22, page 27].

The Complainants assert that the City's argument "that even if the language of the 2003 grant modification is not unambiguous it should be construed against the FAA." Complainants represent that this argument was fairly considered and properly rejected by the Director, in reliance on the Supreme Court's holding in *Bennett v. Kentucky Department of Education*, 470 U.S. 656, 669 (1985), distinguishing *U.S. v. Seckinger*, 397 U.S. 203, 210 (1970). The Complainants claim that "the language in the 2003 grant modification must be construed in favor of the FAA," and "for grants that originate in and are governed by federal statutes, the standards of construction governing statutory interpretation, not the rule of *contra proferentem*, are to be applied." [FAA Item 24, pages 4 and 5].

The Associate Administrator finds that the City has misconstrued the Director's language as to Amendment No. 1. For clarity it is necessary to include the Director's precise wording, "Unlike the first amendment to the grant, changing the description of work but adding no funds, the second amendment involved an additional significant obligation of federal funds and no additional work performed or benefit to the public other than from the extension of the grant covenants." [FAA Item 20, page 16].

The Associate Administrator is not persuaded by the City's arguments. The Director properly concluded that federal grants are a hybrid – partly a contract in terms of voluntary offer, acceptance, and consideration, and partly a creature of statute, and properly relied on the Supreme Court's holding in *Bennett*. [FAA Item 20, page 18].

Additionally, the Associate Administrator does not find that the Director's Determination was premised on a misapplication of basic contractual principles that permitted the Director to resolve an ambiguity in FAA's favor. The Associate Administrator finds that the Director did not err in concluding that the expiration of the City's grant obligations was based upon its execution of Amendment No. 2 and its receipt of additional funds in 2003. As the Director recognized, courts have held that FAA is entitled to deference in interpreting its grant assurance obligations.[5] [FAA Item 20, page 18].

<u>Conclusion Issue 1</u>

Against this background, the Associate Administrator rejects the City's arguments, and concludes that the Director's Determination was not arbitrary, capricious, or an abuse of discretion. The

[5] See *BMI Salvage Corp. v. Federal Aviation Administration, Miami-Dade County, Florida*, U.S. Court of Appeals 11th Circuit No. 11-12583, (July 19, 2012), the court found because the FAA's interpretation is not plainly erroneous or inconsistent with the statute, we conclude that the FAA's finding that demolition is non-aeronautical is entitled to deference.

Associate Administrator finds the Director did not misapply the plain language of the Agreements, did not reject the plain meaning of the contractual language; or did not make newfound contractual interpretations, and finds that all other arguments made by the City are not supported by the evidence in the record. Consequently, the Associate Administrator finds that the Director correctly determined that the City, by requesting accepting, and receiving the FAA offer in 2003 for additional funds results in the City's grant assurance obligations being extended from 2014 to 2023.

Issue 2 - Whether the Director erred in finding that the Complainants demonstrated that they were "directly and substantially affected" as required by 14 C.F.R § 16.23(a).

The City takes the position that Complainants have not been "directly and substantially affected by any alleged noncompliance," and thus they lack standing. The City also argues that "because the City has not engaged in any 'noncompliance' at all—alleged or otherwise—the Complainants cannot satisfy this standing requirement." [FAA Item 22, page 29]. The City also asserts that Complainants "have failed to allege any concrete harm whatsoever" and "[i]nstead, they have offered vague and conclusory allegations that their 'business and operations already have been, currently are, and will continue to be adversely affected by the City's repeated public announcements' concerning the airport's future."

The City also states that "even if the City had somehow repudiated the Grant Agreement, the Complainants are not themselves parties to that contract, and may complain of such a breach only if it somehow injures them." Finally, the City rejects Complainants' assertion and the Director's Determination that being "directly and substantially affected" can be related to the "uncertainty" created by the City's position with regards to its grant assurances. [FAA Item 22, pages 30 and 31].

In their Reply, Complainants state that they are directly and substantially affected. Complainants add that "as recognized by the Director's Determination, Complainants are directly and substantially affected by the uncertainty created by the City's defiant and unique position that it simply is no longer obligated to comply with [Grant Assurance] (B)(1), or any other of the Grant Assurances." Complainants assert that "they cannot plan for the future - as they are entitled to do – without the certainty that the City will comply with fundamental ground rules," since the City had made clear "its intent to close the Airport at first opportunity." [FAA Item 24, page 13].

The Associate Administrator finds that a review of the record substantiates that Complainants are in fact directly and substantially affected by the City's stated position that its grant obligations have expired. As correctly noted in the Director's Determination, Complainants' concerns are reasonable and based upon directions the City Council has provided to City staff (i.e. directing studies of potential closures) and a City Resolution, passed in 1981 but never rescinded, that states the policy of the City is to close the airport. [FAA Item 20, pages 9 and10].

Moreover, the Director properly recognized that the City is currently appealing an order dismissing a case in which the City challenged its Surplus Property Act (SPA) obligations and seeks an order "that the United States shall cease and desist from taking any action to require Santa Monica to operate the Airport Property as an airport after the 1984 Agreement expires in July of 2015." [FAA Item 20, pages 9 and10].

Arguing that it is no longer obligated under the AIP grant assurances; the City has added a great deal of uncertainty with measurable and substantial consequences for all airport users. Assuming the assurances are in fact in effect, the stability and fundamental ground rules the assurances create are undermined by the City's repudiation of its obligations. This is true regardless of whether the Council has taken action yet. The City appears to lean towards a full or partial closure and elimination of existing aviation uses,

which the City has repeatedly called for. It is important to note that the grant assurances provide uniform standards under which to operate and protect the investment of the United States and the rights of airport users and tenants. These include the fundamental assurance that the airport will be open for public use on reasonable terms.

The City's assertion that Part 16 standing requires "concrete harm," appears to misrepresent the language in 16.23(b)(4). Section 16.23(b)(4) calls for a general description of how a complainant is directly and substantially affected by the things done or omitted to be done by the airport sponsor. Flexibility is built into this section, and includes an omission of action that causes a direct and substantial impact upon an airport user, especially one based at the airport.

The FAA must make a judgment call in all cases as to whether a sponsor is reasonably meeting its federal commitments. A sponsor meets its commitments when: (1) the federal obligations are fully understood; (2) a program (e.g., preventive maintenance, leasing policies, operating regulations, etc.) is in place that the FAA deems adequate to carry out the sponsor's commitments; (3) the sponsor satisfactorily demonstrates that such a program is being carried out; and, (4) past compliance issues have been addressed. [FAA Order 5190.6B, paragraph 2.8, page 2-6] Failing to understand its federal obligation is a significant omission on the City's part as a means to ensure that SMO remains a viable public airport within the meaning and intent of the federal investment at the airport.

Accordingly, the Associate Administrator finds that the Director properly found that the Complainants were directly and substantially affected by the uncertainty of the grant expiration date and have standing to bring this Complaint seeking clarification of that date.

Issue 3 – Whether the Director erred in finding that the Complainants adequately pleaded a claim under Part 16 as required by 14 C.F.R. § 16.23(b)(1).

On Appeal, the City argues that "Complainants failed to state a claim under Part 16, and thus have failed to establish any basis for the Director's jurisdiction," and Complainants failed to identify "the specific provisions of each Act that [they] [believe] were violated," as required by 14 C.F.R. § 16.23(b)(1). As a result, the City claims the FAA cannot "make a determination as to whether an airport sponsor is *currently* in compliance."

In support of its arguments, the City asserts that it "is currently in compliance" and "has taken no actions that would violate its grant assurances, nor has it indicated any immediate intent to do as much." The City argues that the Director incorrectly relied on the "theory" that the City repudiated its obligations and that the Director's Determination is an "advisory opinion." [FAA Item 22, pages 31-32]. The City adds that in *SMAA v. City of Santa Monica*, Docket No. 16-99-21, Final Decision and Order at 22 (Feb. 4, 2003) the FAA stated that "the purpose of a Part 16 investigation process is to determine whether or not an airport sponsor is in compliance with its Federal obligations in the current factual situation" and that the Director by disregarding this precedent "issued an advisory opinion, one that was outside the jurisdiction conferred in Part 16." [FAA Item 22, page 32].

In response to the City's argument on Appeal, Complainants assert that they stated a claim under 14 C.F.R. Part 16. Complainants argue two main points: (1) there is no general prohibition on advisory opinions, and (2) 14 C.F.R. Part 16 allows the FAA to address current practices that are likely to result in future violations. The Complainants rely on the case, *JetAway Aviation LLC v. Board of Commissioners, Montrose County, Colorado*, Docket No. 16-06-01, Director's Determination, p. 34 (November 6, 2006), in support of their position that the FAA is not prohibited from resolving a dispute at issue until a violation is imminent or has actually occurred. [FAA Item 24, page 14].

As noted in the Director's Determination, the FAA is responsible for enforcing the grant assurances. The FAA has recognized that any action that is contrary to the sponsor's grant assurances is within the scope of the FAA to review and address. When information contained in the administrative record to a Part 16 complaint leads the agency to review areas of noncompliance – whether or not they are alleged by a complainant – the agency will, nonetheless, make a finding on those areas. All potential grant assurance violations are within the scope of the FAA to review and address, whether alleged in a Part 16 complaint or identified through any other means.[6] As the Complainants state, the 14 C.F.R. Part 16 process does allow the FAA to address current practices or positions that could result in violations.

In this case, the allegation brought forward by the Complainants is whether Grant Assurance (B)(1), which addresses the duration of the grant assurances, is in effect or when it expires. The City has made clear in its filings that it regards its grant obligations to the FAA to have ended on June 29, 2014. By arguing repeatedly that the 2003 AIP grant obligations expired in 2014, the City is clearly rejecting not only the term, but by implication, all its obligations as well. As such, this is more than alleged or potential non-compliance, it is the stated and official position of the City as the airport sponsor. In that respect, it is not a "theory," as the City states, but a legal position on the City's part. Moreover, the Associate Administrator disagrees with the City's characterization that the Director's Determination was merely an advisory opinion that was outside the jurisdiction of Part 16.

Stating, as the City does, that it has "not committed a violation of any Act or Grant Assurance" while at the same time taking the position that SMO is no longer obligated, is not coherent. There is not a valid alternative argument to be made. The Associate Administrator finds that the City cannot in good faith reject the applicability of the grant assurances by claiming they have expired and at the same time claim that it is in compliance with its federal obligations. [FAA Item 22, page 31].

Again it is important to recognize that an airport sponsor meets its federal obligations when:(1) the federal obligations are fully understood; (2) a program is in place that the FAA deems adequate to carry out the sponsor's commitments; (3) the sponsor satisfactorily demonstrates that such a program is being carried out; and, (4) past compliance issues have been addressed. [FAA Order 5190.6B, paragraph 2.8, page 2-6]. This case involves the City's understanding of its federal obligations, including the duration of those obligations. Clearly, the City has not fully understood the duration of its AIP obligations.

The references made by the City to *Northwest Airlines Inc., et al. v. Indianapolis Airport Authority, et al.*, Docket No. 16-07-04, Director's Determination at 29, 44 (Aug. 19, 2008) and *SMAA v. City of Santa Monica*, Docket No. 16-99-21, Final Decision and Order at 22 (Feb. 4, 2003) are out of context. This is because there is no ambiguity concerning the City's position. There is no "hypothetical controversy" or "speculation," on the part of the City based on its position that its grant assurances obligations expired in 2014. The Complainants properly pleaded that they were directly and substantially affected by the uncertainty of the grant expiration date in violation of the City's federal obligations

Accordingly, the Associate Administrator finds that the Director did not err in finding that the Complainants adequately pleaded a violation of the City's federal obligations as required by 14 C.F.R. § 16.23(b)(1), and that issuance of the Director's Determination was within the jurisdiction conferred by Part 16.

[6] See *Boston Air Charter v Norwood Airport Commission, Norwood, Massachusetts*, FAA Docket No. 16-07-03 (August 14, 2008) (Final Decision and Order), pages 26-27.

Issue 4 - Whether the Director erred in finding that the Complainants complied with the requirement under 14 C.F.R § 16.21 to engage in good faith efforts to resolve their complaint informally.

The City takes the position that the Director "erroneously overlooked" the "Complainants 'failure to satisfy their obligation to engage in good faith efforts to resolve the disputed matter" prior to filing their complaint."[7] The City disagrees with the Director's position that "Complainants are not required to conduct continued informal resolution efforts when it appears clear that the City's position on the expiration date is longstanding and fixed." The City characterizes the Complainants' correspondence as "cursory" letters and that this "cannot have constituted the requisite substantial and reasonable effort to achieve resolution." [FAA Item 22, pages 32-33].

In addition, the City argues that "Complainants gave the City no opportunity to provide Complainants with assurances that might have obviated the need for these proceedings." The City summarizes its position on this issue by stating that "Complainants engaged in no real efforts to negotiate with the City regarding its plans for the airport" and that "their complaint therefore should have been dismissed." [FAA Item 22, pages 32-33]. In their Reply, the Complainants state that it engaged in good faith resolution efforts. The Complainants cite to the Director's Determination in support of their position that they "are not obligated to continue to engage in future communications with an airport sponsor that has for all practical purposes signaled that it will not comply with Grant Assurances." [FAA Item 24, page 15].

Part 16 addresses pre-complaint resolution at section 16.21. Specifically §16.21(a) requires a complainant, prior to filing a complaint under Part 16, to initiate and engage in good faith efforts to resolve the disputed matter informally with those individuals or entities believed responsible for the noncompliance. Section 16.21(b) requires the complainant or its authorized representative to certify that (1) the complainant has made substantial and reasonable good faith efforts to resolve the disputed matter informally prior to filing the complaint; and (2) there is no reasonable prospect for practical and timely resolution of the dispute. Section 16.21(c) explains that the certification shall include a brief description of the party's efforts to obtain informal resolution that are relatively recent and demonstrated by pertinent documentation. The regulation makes clear that there is no required form or process for informal resolution, but in each case must meet the requirements.

In the Director's Determination, the Director denied the City's motion to dismiss the complaint for the Complainants' failure to engage in informal resolution. The Director noted that the Complainants were not required to conduct continued informal resolution efforts when it appears that the City's position on the expiration date is longstanding and fixed.

The Associate Administrator acknowledges that the Complainants, through counsel as their authorized representative, detail in their Part 16 Complaint relatively recent efforts undertaken by the Complainants, with supporting documentation, to resolve the matter prior to filing the Complaint. Additionally Complainants state that they have fulfilled the requirements of 14 C.F.R. §16.21.

Although the Director did not discuss that Complainants made a statement rather than a certification as to their good faith efforts under 14 C.F.R. §16.21, the Associate Administrator finds it is a harmless error in the Director's Determination. Accordingly, the Associate Administrator finds that the Director did not err in determining that the Complainants reasonably satisfied their duty to engage in good faith efforts to resolve their complaint prior to filing the Part 16 complaint.

[7] See 14 C.F.R. § 16.21(a).

VIII. FINDINGS AND CONCLUSIONS

The FAA's role in this Appeal is to determine whether the Director erred in findings of fact or conclusions of law in issuing the Director's Determination. Specifically, upon an appeal of a Part 16 Director's Determination, the Associate Administrator has reexamined the record, including the Director's Determination, the administrative record supporting the Director's Determination, the Appeal and Reply submitted by the parties, and applicable law and policy.

Based on this reexamination, the Associate Administrator concludes that the Director's Determination is supported by a preponderance of reliable, probative, and substantial evidence, and is consistent with applicable law, precedent, and FAA policy. The Appeal does not contain persuasive arguments sufficient to reverse any portion of the Director's Determination.

Therefore, the Associate Administrator affirms the Director's finding as reasonable and consistent with Congressional intent in establishing the AIP. The grant assurances are designed to assure that the FAA and the public receive a benefit in return for the federal investment. Assurance (B)(1) reflects the FAA's expectation that the benefit to the public extends, in general, for approximately 20 years. As a result, the Associate Administrator affirms the Director's Determination that the AIP grant obligations for SMO expire in 2023.

ORDER

ACCORDINGLY, it is hereby ORDERED that (1) the Director's Determination is affirmed, and (2) the Appeal is dismissed, pursuant to 14 C.F.R. § 16.33.

RIGHT OF APPEAL

A party to this decision disclosing a substantial interest in the final decision and order of the Federal Aviation Administration may file a petition for review pursuant to 49 U.S.C. § 46110, in the United States Court of Appeals for the District of Columbia Circuit or in the Court of Appeals of the United States for the Circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after a Final Agency Decision has been served on the party. [14 C.F.R. Part 16, § 16.247(a).]

Eduardo A. Angeles

August 15, 2016

Eduardo A. Angeles
Associate Administrator for Airports

INDEX OF ADMINISTRATIVE RECORD

Docket No. 16-14-04

EXHIBIT 1

Item 1 – Part 16 Complaint, dated July 2, 2014.

Exhibit1 – City of Santa Monica Inter-Department Memo dated January 23, 1962.

Exhibit 2 – Office of the Attorney General of the State of California, Opinion No. CV 74-317, dated May 30, 1975.

Exhibit 3 – City Council Meeting, dated June 23, 1981, Resolution No. 6296.

Exhibit 4 – Newspaper article titled "*City rescinds eviction notices to airport firms,*" undated.

Exhibit 5 - Santa Monica Airport Agreement, dated January 31, 1984.

Exhibit 6 – City Council Report, City Council Meeting, March 25, 2014.

Exhibit 7 – City of Santa Monica Regular City Council Meeting Agenda, March 25, 2014.

Exhibit 8 – United States Court of Appeals for the District of Columbia Circuit, The City of Santa Monica, Petitioner, v. Federal Aviation Administration, Respondent; Final Brief of Petitioner City of Santa Monica, dated August 31, 2010.

Exhibit 9 – United States District Court Central District of California, City of Santa Monica, Plaintiff, v. United States of America, Federal Aviation Administration and Michael P. Huerta, in official Capacity as Administrator of the Federal Aviation Administration, Defendants; Complaint for Declaratory Relief Under the Quiet Title Act and United States Constitution, dated October 31, 2013.

Exhibit 10 – United States District Court Central District of California, City of Santa Monica, Plaintiff, v. United States of America, Federal Aviation Administration and Michael P. Huerta, in official Capacity as Administrator of the Federal Aviation Administration, Defendants; Joint Rule 26 Report of Early Meeting of Counsel, dated January 16, 2014.

Exhibit 11 – Letter from Richard K. Simon to Santa Officials, Rod Gould City Manager, Marsha Moultrie City Attorney, and Stelios Makrides Airport Manager, dated June 11, 2014.

Exhibit 12 – Letter from Ivan O. Campbell, Deputy City Attorney, for Santa Monica, to Richard K. Simon, dated June 23, 2014.

Exhibit 13 – Letter from to Richard K. Simon to Ivan O. Campbell, Deputy City Attorney, for Santa Monica, dated June 25, 2014.

Exhibit 14 – Letter from Steven J. Brown, NBAA Chief Operating Officer to The Honorable Pam O'Connor, Mayor, City of Santa Monica, dated March 24, 2014.

Item 2 – Notice of Docketing dated July 17, 2014.

Item 3 –City of Santa Monica, Motion to Dismiss the Part 16 Complaint of National Business Aircraft Association, et al; Memorandum of Points and Authorities in Support Thereof [Pursuant to 14 C.F.R. §16.25(a)(b), dated, August 14, 2014]. Includes Exhibits (A) Grant Agreement, Part V, Assurances, (B) Amendments 1 and 2, and (C) August 12, 2014, Santa Monica Council Meeting, Agenda Item 8-A.

Exhibit A- Federal Aviation Administration, Grant Agreement, Part I Offer, to the City of Santa Monica, California, Sponsor dated June 27, 1994, AIP Project No. 3-06-0239-06, Contract No. DTFA08-94-C-20857, to the City of Santa Monica, California, Sponsor.

1. Part II-Acceptance date June 29, 1994 (page5), signed by officials for the City of Santa Monica.
2. Application for Federal Assistance submitted June 15, 1994, by the City of Santa Monica.
3. Part V of the Application for Federal Assistance, the Assurances, Dated October 1, 1990.

Exhibit B – Amendment No. 1 to Grant Agreement for Project No. 3-06-0239-06, dated November 8, 1999. Amendment No. 2 to Grant Agreement for Project No. 3-06-0239-06, dated August 27, 2003.

Exhibit C - City Council Report, City Council Meeting, August 12, 2014, Agenda Item 8-A, and attestation of Vernice Hankins, City Clerk's Office, that the Staff Report is a true and correct copy of the Staff Report Item 8-A.

Item 4 – Answer of the Complainants to Respondent's Motion to Dismiss, docketed August 28, 2014.

Item 5 – City of Santa Monica's Answer to Complaint, and Supporting Exhibits, dated October 20, 2014.

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b. Application for Federal Assistance submitted June 15, 1994, by the City of Santa Monica.
c. Part V of the Application for Federal Assistance, the Assurances, Dated October 1, 1990.
d. Current FAA Advisory Circulars for AIP Projects, effective June 1, 1994.

Exhibit 2 – Amendment No. 1 to Grant Agreement for Project No. 3-06-0239-06, dated November 8, 1999. Amendment No. 2 to Grant Agreement for Project No. 3-06-0239-06, dated August 27, 2003.

Exhibit 3 - City Council Report, City Council Meeting, August 12,2014, Agenda Item 8-A, and attestation of a City Clerk's Office, that the Staff Report is a true and correct copy of the Staff Report Item 8-A.

Exhibit 4 – Letter from the Manager of the City of Santa Monica to the FAA Airports Program Engineer regarding Santa Monica Airport Grant Amendment for Project No. 3-06-0239-06 (II), dated September 27, 2002, with attachment I.

Item 6 – Reply of the Complainants to the Respondent's Answer to the Complaint dated October 30, 2014.

Item 7 - City of Santa Monica's Rebuttal to the Reply Brief of Complainants, docketed November 13, 2014.

Item 8 – FAA's Request for Additional Information, dated February 19, 2015.

Item 9 - Complainants' Response to the request for additional information, dated March 25, 2015.

Item 9A - Complainants' Correction to Response to the request for additional information, dated March 27, 2015.

Item 10 – City of Santa Monica's Response to FAA's Request for Additional Information Declaration, with Exhibit, dated March 25, 2015.

Item 11 – Letter from the City to the FAA requesting the Grant be reopened and to award additional grant money, dated May 7, 2003.

Item 12 – Letter from the FAA to the City agreeing to reopen grant and disburse additional grant money, undated copy.

Item 13 - Final Construction Report, Airport Improvements, Santa Monica Airport, AIP Project No.3-06-0239-06 (II).

Item 14 – Letter from the City requesting Amendment No. 1 to the grant dated August 2, 1999.

Item 15 - Santa Monica Airport, Airport Master Record, 5010.

Item 16 - Notice of Extension of Time to issue the Director's Determination to August 21, 2015, dated August 6, 2015.

Item 17 - Notice of Extension of Time to issue the Director's Determination to September 21, 2015, dated August 21, 2015.

Item 18 - Notice of Extension of Time to issue the Director's Determination to October 15, 2015, dated September 21, 2015.

Item 19 - Notice of Extension of Time to issue the Director's Determination to December 4, 2015, dated October 16, 2015.

Item 20 –Director's Determination, dated December 4, 2015.

Item 21A –Respondent City Request for Hearing and Notice of Appearance, dated December 23, 2015.

Item 21B –Complainants' Reply to City of Santa Monica's Request for Hearing, dated January 6, 2016.

Item 21C –FAA Order Denying City's Request for Hearing, dated January 21, 2016.

Item 22 –Respondent City of Santa Monica's Notice of Appeal and Appeal's Brief, dated January 8, 2016.

Item 22A –Respondent City of Santa Monica's Petition to Supplement, dated January 8, 2016, and McCarthy declaration.

Item 22B –Respondent City of Santa Monica's Notice of Filing, dated January 13, 2016, and Mathieu declaration.

Item 23 –Notice of Complainant Name Updates, dated January 4, 2016.

Item 24 –Reply of the Complainants to Respondent's Appeal from the Director's Determination and to Respondent's Petition to Supplement the Record on Appeal, dated January 28, 2016.

Item 25 - Notice of Extension of Time to issue the Final Agency Decision to June 15, 2016, dated March 28, 2016.

Item 26 - Notice of Extension of Time to issue the Final Agency Decision to August 1, 2016, dated June 22, 2016.

Item 27 – Notice of Extension of Time to issue the Final Agency Decision to August 15, 2016, dated August 1, 2016.