UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

INTERIM CEASE AND DESIST ORDER

This matter is before the Federal Aviation Administration (FAA) pursuant to a September 26, 2016 Notice of Investigation (NOI) FAA Docket Number 16-16-13 issued to the City of Santa Monica (City). The City responded to the NOI on November 4, 2016. Having considered the City's response, the FAA hereby ORDERS the City to immediately CEASE AND DESIST from taking any actions to evict American Flyers, Inc. (American Flyers) and Atlantic Aviation FBO, Inc. (Atlantic) from Santa Monica Municipal Airport (SMO) until such time as the FAA issues a final agency decision on the NOI.[1]

BACKGROUND FACTS

SMO is a public-use airport owned and operated by the City. The 227-acre airport has approximately 269-based aircraft with approximately 452 average aircraft operations per day. The airport is located in a highly congested air traffic area and serves as a critical reliever airport for Los Angeles International Airport (LAX), which is located seven miles to the south. *See City of Santa Monica v. FAA*, 631 F.3d 550, 551 (D.C. Cir. 2011).

Closure of SMO will contribute to significant congestion of air navigation in the greater Los Angeles region and impose a significant burden on the flying public. Restrictions at SMO would place a significant and detrimental burden on both regional and interstate commerce. *See United States v. City of Santa Monica*, 330 F. App'x124, 125 (9th Cir. 2009) (noting the "large disruption to air traffic" that would occur if the City were allowed to ban certain categories of aircraft).

In light of the City's unremitting efforts to evict from SMO critical aeronautical service providers and its hostility to the sale of leaded aviation fuel necessary for flight of today's aircraft in clear contravention of law, the FAA is issuing this order to maintain the status quo at SMO until a final agency decision is reached.

With regard to the two aeronautical service providers, on September 15, 2016, the City issued Notices to Vacate (Notices) to Atlantic and American Flyers. Atlantic and American Flyers are the only two FBOs that provide fuel at SMO. Couched in mandatory language, the Notices require that the recipient "must quit and vacate the premises and surrender possession" within 30 days after service of the notice and indicate that failure to quit and vacate will result in "legal proceedings . . . to recover possession of the premises and to seek a money judgment for damages for each day of occupancy after the expiration day of this notice."

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[1] This Order is issued pursuant to 49 U.S.C. § 46105 and 14 CFR § 16.109.

With regard to the sale of aviation fuel, on March 27, 2015, the City Council voted to include provisions in SMO leases that limit the sale of aircraft fuels for piston-engine aircraft to "simply unleaded fuels" and fuels for turbine-engine aircraft to biofuels or other sustainable fuels by a date or dates certain. The City Council also voted to include a provision in flight school leases prohibiting the schools, as lessees, from using leaded fuels for flight training. Neither general aviation, nor business jets or turboprop aircraft, can operate using the fuels the City voted to require.

In response to the Notices and other conditions at the airport, the FAA issued the September 26, 2016, NOI which included investigating the City's failure to enter into leases with aeronautical tenants.[2] Grant assurance 22 requires the City to make space available for aeronautical tenants on reasonable terms based on good faith negotiations. The City has failed to grant any aeronautical leases since 2015 and is alleged to have negotiated in bad faith while seeking onerous and unreasonable terms. Moreover, while the City's airport leasing policy provides for a broad collection of uses, the majority of which are incompatible with an operating airport, the obvious use category that the leasing policy fails to include is aviation. The City's leasing policy and its failure to enter into leases with reasonable terms is under investigation in the NOI.

On November 4, the City filed its response and also filed unlawful detainer actions against Atlantic and American Flyers, the two aeronautical service providers providing aviation fuel at SMO.

The City justifies its evictions of American Flyers and Atlantic on the basis of its desire to supplant the fuel services they provide and to do so on an exclusive basis. NOI Response, pgs. 16-17.

Exclusive rights at Federally-obligated airports are prohibited. 49 U.S.C. § 40103(e), 47107(a)(4); Grant Assurance 23. However, there is an exception to this prohibition that generally exempts airport proprietors such as the City. Whether the City may avail itself of a "proprietor's exclusive" right to provide aeronautical services is one of the issues being investigated in the NOI.

ANALYSIS OF THE EVICTIONS

A. American Flyers

The City's notice to American Flyers requires that it quit and vacate the premises by approximately October 15, 2016, and on November 4 the City filed an unlawful detainer action against American Flyers.

However, the City's own response to the NOI appears to provide no basis to evict American Flyers. American Flyers consists of a flight school, hangar and tie-down rentals and a self-fueling facility for aviation gas. NOI Response, p. 20. The City's plan for a

[2] Additional information regarding the NOI is contained in Appendix § II.C.

proprietary exclusive is described as the provision of "aircraft repositioning" and "aircraft fueling for both transient and tenant aircraft." NOI Response, pp. 19, 37. The City indicates no intention of providing a flight school. Accordingly, the City's desire to provide "aircraft fueling" and "aircraft repositioning" services cannot and does not justify its eviction of American Flyer's flight school services.

In addition, Grant Assurance 22 requires the City to "make the airport available as an airport for public use on reasonable terms and without unjust discrimination." FAA's Airport Compliance Manual provides:

The sponsor's federal obligation under Grant Assurance 22, Economic Nondiscrimination, to operate the airport for the public's use and benefit is not satisfied simply by keeping the runways open to all classes of users. The assurance federally obligates the sponsor to make available suitable areas or space on reasonable terms to those willing and qualified to offer aeronautical services to the public (e.g. air carrier, air taxi, charter, *flight training*, or crop dusting services) . . . .

FAA Order 5190.6b, ¶ 9.7 (emphasis added).[3]

Moreover, in the Part 16 proceeding that it initiated, on September 21, 2016, American Flyer filed a motion for the FAA to issue an Interim Cease and Desist Order blocking its eviction. The City had until October 1 to respond to American Flyers' motion. The FAA notes that the City, for whatever reasons, chose not to oppose American Flyer's motion.[4]

B. Atlantic

The City's Notice to Atlantic required it to quit and vacate to the premises by approximately October 15, 2016 and on November 4 the City filed an unlawful detainer action against Atlantic. Atlantic is the only provider of jet fuel at SMO and one of only two providers of general aviation gasoline. Atlantic also provides overnight parking, hangar space and other services to transient aircraft as well as to turbine and piston aircraft that are based at SMO. NOI Response, p.21.

However, the City's own response to the NOI appears to provide no basis to evict Atlantic. According to the City, it hopes to provide "aircraft repositioning" and "aircraft fueling for both transient and tenant aircraft" services. NOI Response, pp. 19, 37. Those services,

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[3] This bedrock principle has been affirmed many times over in FAA's administrative adjudications. *See U.S. Constr. Co. v. City of Pompano Beach,* No. 16-00-14 at 18 n.63 (Director's Determination, Aug. 16, 2001) (quoting *City of Pompano Beach v. FAA*, 774 F.2d 1529, 1538 (11th Cir. 1985) ("extended period of time and delays in negotiating a lease between [an applicant] and the [Sponsor]" violates assurance); *Martyn v. Port of Anacortes*, No. 16-02-03, at 32 (Director's Determination, Apr. 14, 2003 (finding sponsor engaged in unjust economic discrimination when it rejected the complainant's proposal to construct a hanger facility, not for "legitimate reasons," but based "on a strong desire to limit growth of the Airport). In part, the NOI was issued to investigate whether the City's notice to evict American Flyers violated Grant Assurance 22. NOI, p.7.

[4] *See* Appendix § II.B.

however, are not congruent with the aeronautical services Atlantic currently provides. As we concluded with regard to American Flyers, because the City does not plan to assume *all* the aeronautical services offered by Atlantic, Atlantic retains a right to access the airport, on commercially reasonable terms, to provide aeronautical services.

Even in the event the City intends to displace all the aeronautical services that Atlantic offers, the City's NOI response demonstrates that Atlantic's eviction is premature and, thus, unlawful. Simply put, the City acknowledges that it is not ready to assume Atlantic's services, either as of October 15 when it issued its Notice or on November 4 when it filed suit to evict Atlantic.

The City's plan to provide aeronautical services is nascent at best. An item of inquiry in the NOI is whether the City is "ready . . . to offer FBO[5] services . . . ." NOI, p. 8. The City's NOI response of November 4, 2016, makes clear that "the City is *still in the planning and assessment stage* when it comes to a proprietary exclusive FBO." NOI Response, p.38 (emphasis added).

As evidence of its readiness and preparation, the City points to its Fixed Based Operator Workplan. However, its Workplan is less than two pages, undated, unsigned and states that its purpose is to "provide an *overview* of the *estimated timelines* in completing the task[s] identified prior to the City assuming management of the FBO at Santa Monica Airport." NOI Response, Ex. 49 (emphasis added). The Workplan further notes:

This is a new enterprise for the City and as such it requires due diligence prior to assuming these added responsibilities. . . . Staff currently does not have the expertise or know how to operate an FBO . . . . [The Workplan then recommends that the City] hire a consultant to develop a plan that the City will follow and lay the foundation of assuming control of the FBO.

With regard to equipment, the Workplan indicates that "[o]nce the level of service is identified then staff can begin the process of identifying the number and type of equipment necessary to support the operation."

Based on the City's own response to the NOI, its plans, if permissible at all, are far too nascent to justify the removal of the airport's main service provider. Trying to evict Atlantic, with no current capability to replace its services, is tantamount to closing or highly restricting the airport because it creates significant instability and improperly threatens to undermine the availability of necessary aviation services.

We also note that in its own Part 16 proceeding, Atlantic filed a motion for the FAA to issue an Interim Cease and Desist Order blocking its eviction. The City had until

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[5] FBO services are/include the sale of aviation fuel, line services for GA aircraft, air taxi and air charter operations, scheduled or nonscheduled air carrier services and support services, pilot training, aircraft rental and sightseeing, aircraft sales and service, aircraft storage, repair and maintenance of aircraft, sale of aircraft parts, aerial photography, crop-dusting and aerial advertising.

September 29 to respond to Atlantic's motion. The FAA notes that the City, for whatever reasons, chose not to oppose Atlantic's motion.[6]

In sum, the City's own responses to the NOI demonstrate indicate the City's eviction of Atlantic is unlawful.

CONCLUSION

This Interim Cease and Desist Order is not final agency action. This Order is intended to maintain the status quo at SMO until such time as FAA completes its investigation under the NOI and issues a final agency decision.[7] The FAA reserves the right to revisit the findings in this Interim Order based on the findings of the investigation initiated by the NOI. The City may file a response to this Interim Cease and Desist Order within 30 days of service.

The FAA hereby ORDERS the City to immediately CEASE AND DESIST from acting to remove Atlantic from SMO until the FAA issues a final agency decision on the NOI.

The FAA hereby ORDERS the City to immediately CEASE AND DESIST from acting to remove American Flyers from SMO until the FAA issues a final agency decision on the NOI.

Kevin C. Willis

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

December 12, 2016
Date

[6] *See* Appendix § II.B.

[7] To ensure the prompt investigation and resolution of the NOI, by separate Notice to the City the FAA is scheduling the depositions of Rick Cole, the City Manager; SMO's Manager, Stelios Makrides; and Nelson Hernandez, Senior Advisor to the City Manager for Airport Affairs.

APPENDIX

This Appendix accompanies and is incorporated into the FAA's interim cease and desist order.

I. Federal Obligations

Federal obligations arising from Airport Improvement Program (AIP) grants and Surplus Property Act (SPA)[1] transfers are discussed below.

A. The Grant Agreement

On June 27, 1994, the City accepted an Airport Improvement Program grant with a maximum federal obligation of $1,604,700.00 for certain improvements at the Airport pursuant to the terms of a grant agreement (that included standard "grant assurances") that the Parties agree remained in effect for twenty years.[2] On August 27, 2003, the City accepted an amendment to the grant agreement that increased the maximum federal obligation by $240,600.00.

On July 2, 2014, the FAA received a formal complaint under 14 CFR Part 16 that sought, *inter alia*, clarification as to when the City's grant obligations ended. On December 4, 2015, the FAA issued a Director's Determination holding that the acceptance of the grant amendment in 2003 extended the grant assurance expiration date, and therefore the grants remain in effect until August 27, 2023.

The City appealed and on August 15, 2016, the FAA issued a Final Agency Decision (FAD) that upheld the Director's Determination. *National Business Aviation Association, et al., v. City of Santa Monica*, FAA Docket No. 16-14-04.

On August 25, 2016, the City appealed the FAD to the U.S. Court of Appeals for the Ninth Circuit. *City of Santa Monica v. FAA*, Case No. 16-72827 (9th Cir.).[3] This case is pending.

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[1] Surplus Property Act of 1944, § 13(g), Pub. L. No. 457, 58 Stat. 765 (1944), *amended by* Pub. L. No. 289, 61 Stat. 678 (1947), *codified, as further amended, at* 49 U.S.C. § 47151 *et seq.*

[2] Some Grant Assurances remain in effect beyond 20 years, but not Assurance 22.

[3] The FAA's legal interpretations of the grant assurances are subject to a level of review that is "highly deferential," and its interpretations are presumed valid. *City of Santa Monica v. FAA,* ___ F.3d __, p.18 (D.C. Cir. 2004). FAA's conclusions may be overturned "only if they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Id.* at p.7.

a. Grant Assurance 22

Grant Assurance 22(a), Economic Nondiscrimination, provides that the airport operator or "sponsor" shall:

make the airport available as an airport for public use on reasonable terms and without unjust discrimination to *all* types, kinds and classes of aeronautical activities, including commercial aeronautical *activities* offering *services to the public at the airport*.

Grant Assurance 22 (emphasis added). Grant assurance 22 is mandated by statue, 49 U.S.C. § 47107(a)(1), and intended "to insure the maintenance of conditions essential to an efficient national air transport system, including access to airports on a reasonable and nondiscriminatory basis."[4] *City and County of San Francisco v. F.A.A.*, 942 F.2d 1391, 1395 (9th Cir. 1991).

Grant assurance 22 obligates the sponsor to make available suitable areas or space on reasonable terms to those willing and qualified to offer a broad range of aeronautical services to the public or support services (such as fuel, storage, tie-down, or flight line maintenance services) to aircraft operators.

The sponsor's obligation under grant assurance 22 to operate the airport for the public's use and benefit is not satisfied simply by keeping the runways open. The assurance obligates the sponsor to make available on commercially reasonable terms suitable areas or space to those willing and qualified to offer aeronautical services to the public (e.g. air carrier, air taxi, charter, flight training, or crop dusting services); support services (e.g. fuel, storage, tie-down, or flight line maintenance services) to aircraft operators; and support services to noncommercial aeronautical users (i.e., hangars and tie-down space for individual aircraft owners). FAA Order 5190.6B, ¶ 9.7.

Finally, grant assurance 22 requires the sponsor to negotiate in good faith and on reasonable terms with prospective aeronautical service providers. The FAA

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[4] FAA also has authority to address violations of the assurances. 49 U.S.C. § 47111(f) provides:

> For any violation of . . . any grant assurance . . . the Secretary may apply to the district court . . . [and] [s]uch court shall have jurisdiction to enforce obedience thereto by a writ of injunction or other process, mandatory or otherwise, restraining any person from further violation.

interprets the willingness of a prospective provider of such services to lease space and invest in facilities as sufficient evidence of a public need for those services.

b. Grant Assurance 23

Grant Assurance 23 provides that the sponsor "will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public." This grant assurance does not expire, but remains in effect as long as the airport is used as an airport. See Assurance B(1). As with assurance 22, grant assurance 23 is also mandated by statute. 49 U.S.C. § 47107(a)(4). The prohibition on exclusive rights also exists by operation of federal statute, independent of the grant assurances and the Surplus Property Act. 49 U.S.C. § 40103(e).

B. Surplus Property Act (SPA) Obligations

The City's SPA obligations are as follows. The City acquired the initial airport property, which was commonly known as Clover Field, in 1926. In 1941, the City and the federal government entered into two leases (subsequently modified) for use of Clover Field to aid the war effort. From 1941 to 1946, the United States extensively improved Clover Field, including but not limited to the construction of a concrete runway, taxiway, hangars, and a control tower.

In 1946, the City formally requested "that it be given an opportunity to acquire, without reimbursement, all government owned airport facilities located upon land owned by the City of Santa Monica for the purpose of encouraging and fostering the development of civil aviation." The federal government granted the City's request, and, in 1948, the parties executed an Instrument of Transfer in which the United States surrendered its leasehold interest and several easements, as well as extensive airfield improvements including the entire landing area, the concrete 5,000-foot runway, the taxiway system, hangars, and control tower.

Pursuant to the Instrument of Transfer, the United States "remised, released and forever quitclaimed" all of its "right, title, interest and claim" to the described "real, personal, or mixed property" to the City, subject to reservations, restrictions and conditions specified in the Instrument. The Instrument of Transfer provided that "by acceptance of this instrument or any rights hereunder," the City "agrees that the aforesaid surrender of leasehold interest, transfer of structures,

improvements and chattels, and assignment, shall be subject to" specified conditions "which shall run with the land," including:

[t]hat . . . the land, buildings, structures, improvements and equipment in which this instrument transfers any interest shall be used for public airport purposes for the use and benefit of the public on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right . . . .

The City confirmed its acceptance of the Instrument of Transfer by passing a resolution in 1948, and the Instrument of Transfer was recorded as a quitclaim deed with the County Recorder for the County of Los Angeles.
Sixty-five years later, in October 2013, the City filed a federal court action, *City of Santa Monica v. United States,* in which it sought, contrary to the express terms of the 1948 Instrument of Transfer as recorded, declaratory relief that it has the unilateral right to close SMO. The District Court dismissed the City's complaint as untimely and the Ninth Circuit reversed and remanded for further consideration. *See City of Santa Monica v. United States,* No. 14-55583, 2016 WL 2849595 (9th Cir. May 16, 2016).
The case is currently before the United States District Court for the Central District of California. *City of Santa Monica v. United States,* No. 2:13-cv-08046 (C.D. Cal.). The District Court ordered the parties to participate in private mediation to be completed no later than March 7, 2017 and scheduled the matter for trial in August 2017.

II. Current Status at SMO

A. Recent City Action By and Through the Santa Monica City Council

The Santa Monica City Council (City Council or Council) has taken a number of actions related to closing or impede the provision of aeronautical services, including aviation fuel and flight training, in the regular course of business at SMO. These actions include:

1. On October 27, 2015, the City Council voted to: (i) include provisions in SMO leases that limit the sale of aircraft fuels for piston-engine aircraft to "simply unleaded fuels" and fuels for turbine-engine aircraft to biofuels or other sustainable fuels by a date or dates certain; and (ii) include provision in flight school leases that prohibit lessees from using leaded fuels for flight training.

2. On March 22, 2016, the City Council approved an Airport Leasing and Licensing Policy. The policy expressly: (i) authorizes the use of SMO for "parks and open space, arts/cultural, creative space, professional theaters, museums, artist studios, art galleries, photograph studios," and restaurants, among other non-aviation uses; and (ii) prohibits any use involving products "which by nature of the operation is likely to be obnoxious or offensive to the surrounding environment," as well as "high intensity uses that are incompatible with the surrounding residential uses." The policy, although addressing leases at an *airport*, never mentions *aeronautical* uses, but does provide a catch-all category for "uses required by law."

3. On August 23, 2016, the City Council enacted a resolution declaring that it is the policy of the City to close the airport to aviation uses as soon as legally permitted with the a goal of on or before July 1, 2018.

4. Also on August 23, 2016, the City Council directed the City Manager to: (i) replace all private Fixed Base Operators (FBOs) with operations provided by the City on an exclusive proprietary basis; and (ii) cause the removal of such FBOs by September 15, 2016 or as soon as practicable thereafter.

5. To carry out the airport closure resolution, on August 23, 2016 the City Manager affirmed his intent to phase out the sale of leaded fuel "as soon as legally possible" and enter into contract negotiations to replace it with unleaded fuel.

B. Private Part 16 Complaints

American Flyers and Atlantic filed separate Part 16 complaints with the FAA on September 21 and September 13, respectively. *See* 14 CFR Part 16. Both parties have likewise filed motions for the FAA to issue a Cease and Desist Order to block their evictions. The City did not oppose either motion, and the time to file such an opposition expired on September 29 with regard to Atlantic's motion and October 1 for that of American Flyers'. 14 CFR § 16.19(c).

C. FAA Issues Notice of Investigation

In response to these notices and other conditions at the airport, FAA issued:

- The NOI, a response to which was required by October 6.
- An Administrative Subpoena requiring the production of documents pertaining to the City's actions by October 3; and
- An Administrative Subpoena compelling the deposition testimony of certain City officials on October 12.

As noted in the NOI, these tight time deadlines were in response to the City's demand that tenants vacate within 30 days of its September 15th notice. Among the issues considered under the NOI is whether the City's "notices of removal to the only two FBO's that provide fuel at SMO [i.e., Atlantic and Am Flyers] constitute a violation of grant assurance 22." NOI, p.7.
The NOI also includes an investigation of the City's leasing policy and practices. The City has not issued any leases to aeronautical users since 2015. The City's leasing policy provides for a broad collection of uses but, despite its application to an operating airport, fails to include aviation uses. Grant Assurance 22 requires the City to provide space to aeronautical tenants on reasonable terms. The City's leasing policy and its failure to enter into leases with reasonable terms is under investigation in the NOI.

a. First Extension of Time

In response to the City's request for more time to respond and to facilitate a possible negotiation of a standstill agreement, the FAA and the City agreed to several extensions of the above-cited deadlines. First, the due dates for the City's response to the NOI and production of documents, and for the deposition of City officials, were extended to October 14 and October 21, 2016 respectively. In return, the City agreed to forebear on the notices to quit until October 28.

b. Second Extension of Time

Second, the due date for the City's response to the NOI and production of documents, and for the deposition of City officials, was extended to October 21 and October 28, 2016, respectively. In return, the City agreed to forebear on the notices to quit until November 4.

c. Third Extension of Time

Third, the due date for the City's response to the NOI and the production of documents, and for the deposition of City officials, was extended to November 4, and November 11, 2016. In return, the City agreed to forebear on the notices to quit, and not to move forward on evictions until November 25.
On November 4, in accord with the due date set by the Third Extension of Time, the City filed its response to the NOI and produced documents in response to the subpoena. On the same day, having availed itself to the extensions, the City then immediately filed its unlawful detainer actions, notwithstanding its agreement to forebear doing so until November 25. The City's filing of its unlawful detainer action was the next step in the legal process of evicting American Flyers and Atlantic.

III. General Requirement re: Proprietary Exclusive Operations

If the airport sponsor lawfully may opt to provide an aeronautical service exclusively, it must use its own employees and resources. Notably, the manner under which a sponsor exercises a proprietary exclusive operation also remains under the purview of Grant Assurance 22. Limitations imposed by the airport sponsor on aeronautical users, including service providers, may not conflict with the sponsor's obligations to provide access to the airport on reasonable and not unjustly discriminatory terms and other applicable federal law. FAA Order 5190.6B, ¶ 14.3.

IV. Federal Deeds

It is a "well-established [interpretive] canon that federal land grants are to be construed in favor of the government, with any doubts resolved in the government's favor." *Montara Water Sanitary v. County of San Mateo,* 598 F. Supp.2d 1070, 1081 (N.D. Cal. 2009) (quoting *See United States v. Union Pacific R.R. Co.,* 353 U.S. 112, 115-16, 77 S.Ct. 685, 1 L.Ed.2d 693 (1957)). "The strict set of limitations on the use . . . of such property reveals Congress's expectation that the . . . [FAA] would serve as a final check on actions potentially harmful to the airports, wielding an effective veto power." *Montara,* 598 F. Supp.2d at 1082-15.

V. Documents Provided by the City As Evidence of Readiness and/or Preparations for the FBO

In addition to the Workplan discussed in the Interim Order, the other documents the City provides are equally bare bones. As further support for its preparations, the City provided an e-mail exchange with the Naples (Florida) Airport Authority. The City inquires whether the Naples Airport Authority "would not object to sharing with us the issues associated with a public FBO." In his August 31, 2016 response to this inquiry, the Senior Director of Airport Operations replies that he "would be happy to help in anyway I can," but the City provides no further detail regarding that exchange. NOI Response, Ex. 41. This seemingly casual exchange hardly evidences the City's readiness to provide services currently provided by Atlantic.

The City also provided a September 15, 2016 letter to a company seeking a "proposal to develop business plan for a new Fixed Based Operator" at SMO, but the City provides no submitted proposal or any information about a selection of a contractor to provide such plan. That this letter is dated the same day the City served Atlantic with Notices to Quit and Vacate evidences little forethought by the City of the magnitude of responsibilities to establish and demonstrate the present readiness to provide aeronautical services prior to seeking to evict current service providers - Atlantic and American Flyers. NOI Response, Ex. 42.
Indeed, the City's initial effort to obtain insurance for its new operation is only evidenced by an internal email of September 20 indicating that staff will check with the City's broker to see what type of information the broker will need to provide a quote. NOI Response, Ex. 45.

VI. City's Desire to Avoid Transaction Costs Associated with Standing Up its Proprietary FBO

As additional justification for its actions, the City argues that it must first act to evict Atlantic now, because if it was "required to wait until its planning was complete and FBO employees were trained and hired in order to commence the removal proceedings, the City would be greatly prejudiced." This is because the City would "necessarily have to pay the employees for the proprietary exclusive FBO even though they would not be performing their needed function during the pendency of the UD proceedings." NOI Response, p.23.

The transition from privately- to sponsor-proffered aeronautical services should be amicably coordinated to ensure no break in aeronautical services and the City's preemptive efforts to remove an aeronautical service provider from the premises of SMO before the City is fully ready to assume such services is *per se* unreasonable. In this case, the affected FBOs - and all the other aeronautical users at SMO - are operating without leases or even holdover agreements and have been doing so since June 2015. Notably, such irregularities regarding property relations at the airport have existed well before the council first directed the establishment of the proprietary exclusive on August 23, 2016. The council resolution directing the establishment of the proprietary exclusive (among other resolutions addressing fuel) also contains illegal directives to restrict aviation fuel to nonleaded products that many or most aircraft cannot use. Given these circumstances, the FAA must act to protect the integrity of SMO and assure that aeronautical service providers are protected.

In conclusion, the City's eviction actions are much too precipitous given the City is still very much in the early planning stages. Under Grant Assurance 22, the City must allow aeronautical service providers to operate at SMO. The City's plans to assume such services are much too nascent to justify the City's current eviction actions, and the plans fail to provide for the continued operation of the current service-providers on reasonable terms. While we recognize the need limit transition costs, certain reasonable transition costs are inevitable and the City will have to have its staff hired and trained at some reasonable time in advance of its proposed takeover of aeronautical to ensure a smooth transition with no gap in services. Simply put, this is a cost of implementing a new business.

VII. City's Legal Actions Are Merely Procedural

In its response to the NOI, the City characterizes its Notices to Quit and Remove as being merely initial and/or procedural. According to the City, the Notices:

- Change nothing. NOI Response, p. 2;
- Have no practical effect *if not followed by an Unlawful Detainer action.* NOI Response, p.32 (emphasis provided); and
- Merely "serve to preserve the City's rights to *initiate eviction proceedings* .." NOI Response, p.22 (emphasis added).

FAA rejects these characterizations based on the mandatory language of the notices. In addition, the City has since filed its Unlawful Detainer actions, thereby further diluting the weight of such characterizations.

Finally, the City, taking this logic one step further, even downplays the immediacy of its unlawful detainer actions as having no effect until it actually moves to "enforce a UD judgment." NOI Response, p. 32. The FAA rejects the City's efforts to dismiss its efforts.

In sum, given the City's stated policy to close the airport, and the commercial instability and uncertainty it created for aeronautical service providers, its ongoing legal actions to evict tenants violate its assurance to "make the airport available as an airport for public use on reasonable terms . . . ." The City's ongoing eviction action is inherently inconsistent, absent conditions not present here, with the assurance that requires the City to provide access to SMO to aeronautical service providers on reasonable terms.