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

Western-Pacific Region
Office of the Regional Counsel

P.O. Box 92007
Los Angeles, CA 90009-2007

MAR 3 1 2016

Alan Levenson
Alan Levenson Photography
2124 Pier Ave.
Santa Monica, CA 90405
alan@alanlevenson.com

Subject: Freedom of Information Act (FOIA) Request 2016-002792

Dear Mr. Levenson:

Thank you for your FOIA appeal letter dated March 10, 2016 addressed to the FAA Assistant Administrator for Finance and Management dated March 10, 2016. I have been asked to respond to your letter.

You requested that FAA perform an additional search for any Part 13 complaints against the City of Santa Monica, California during the years of 1981-1984.

An additional search for the records was conducted within FAA's legal department, and two documents exist that were responsive to your request. Those two documents are enclosed (21 pages total). This constitutes our final response. No documents were withheld from this additional response based on any FOIA exemption.

Your request qualifies for the "All Other" fee category, whereby you are not charged for the first 2 hours of search time, any review time, and the first 100 pages of documents. There is no charge to you for processing this request.

If you have any questions, please contact Joseph Manalili, Attorney, Airports and Environmental Law, at (310) 725-7137.

Sincerely,

Lierre Green
Deputy Regional Counsel

Enclosure

Santa Monica Airport Association

3013 Airport Avenue, Santa Monica, California 90405 (213) 390-9554

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Return to - 7

January 13, 1982

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REGIONAL COUNSEL
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2 45 p.m.

Mr. J.E. Murdock,
Chief Counsel
Office of the Chief Counsel
Federal Aviation Administration
Department of Transportation
800 Independence Avenue S.W.
Washington, D.C. 20591

Mr. DeWitt Lawson
Regional Counsel
Western Region
Federal Aviation Administration
Department of Transportation
AWP - 7
P.O. Box 92007
World Way Postal Center
Los Angeles, CA 90007

Re: Complaint for Violation of Transfer Agreement from Federal Government to City, Covenants, Conditions, and Restrictions Contained Therein, Various Grant Agreements, Sponsor's Assurances, and Provisions of the Federal Aviation Act.

Gentlemen:

Pursuant to the procedures set forth in 14 CFR, §13.3(b) and other provisions of law, request is hereby made that the Chief Counsel and the Regional Counsel for the Federal Aviation Administration investigate violations by the City of Santa Monica of the Transfer Agreement dated August 10, 1948, all presently operative Grant Agreements with the United States of America, Sponsor's Assurances and section 308 (a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1349 (a) in that the City has and eminently will grant and negotiate to grant exclusive rights, has failed to comply with and threatens to violate assurances against exclusive rights and unjust discrimination contained in the airport development grant agreements entered into under the Airport and Airway Development Act of 1970, and amendments thereto (49 U.S.C. 1701 et seq., has failed and continues to fail to honor and threatens to violate express and implied dedications of airport land to public use in violation of principles of state law contained in Gion v City of Santa Cruz 2 Cal 3d 29, 84 Cal

Rptr 162, easement and dedication principles as set forth in Browning vs City of Santa Monica, and promissory estoppel principles as enunciated in Hilltop Properties Inc. v State of California 233 C.A. 2d 349, 43 Cal Rptr 605, 37 ALR 3d 109. The specific violations are set forth herein in detail.

1. The City of Santa Monica is in violation of contractual rights owed to the United States of America for the benefit of the citizens of the United States, users and potential users of the airport. Specifically, the City of Santa Monica is in violation of and threatens to violate the following convenants conditions and restrictions contained in the Instrument of Transfer dated August 10, 1948, between the UNITED STATES OF AMERICA acting by and through the WAR ASSETS ADMINISTRATION and the CITY OF SANTA MONICA:

> ...[The United States of America] in consideration of the of the assumption by the CITY OF SANTA MONICA, a body corporate and politic under the laws of the State of California, PARTY OF THE SECOND PART, of all the obligations and its takings subject to certain reservations, restrictions, and conditions and its covenant to abide by and agreement to certain other reservations, restrictions, and conditions, all as set out hereinafter, has remised, released, and foreever quitclaim to said City of Santa Monica, its successors and assigns, under and subject to the reservations, restrictions, and conditions, exceptions, and reservations of rights hereinafter set out, all its right, title, interest, and claim in and to the [airport property] [pg 1]
>
> ***
>
> That by the acceptance of this instrument, or any rights hereunder, the PARTY OF THE SECOND PART, for itself, its successors and assigns, also assumes the obligations of, covenants to abide by and agrees to, and this surrender, transfer, and assignment is made subject to the following reservations and restrictions set forth in subparagraphs (1) to (7) of this paragraph, which shall run with the land, imposed pursuant to the authority of Article 4, Section 3, Clause 2 of the Constitution of the United States of America, the Surplus Property Act of 1944, as amended, Reorganization Plan One of 1947 and applicable rules, regulations and orders.
>
> In pertinent part the covenants, conditions and restrictions are:
>
> (1) The insofar as it is within its powers, the PARTY OF THE SECOND PART shall adequately clear and protect the aerial approaches to the airport by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

***

(4) That no exclusive right for the use of the airport of which the property transferred by this instrument is located shall be vested (directly or indirectly) in any person or persons to the exclusion of others in the same class, the term "exclusive right" being defined to mean

(1) any exclusive right to use the airport for particular aeronautical activity requiring operation of aircraft.

(2) any exclusive right to engage in the sale or supplying of aircraft, aircraft accessories, equipment, or supplies (excluding the sale of gasoline and oil), or aircraft services necessary for the operation of aircraft (including the maintenance and repair of aircraft, aircraft engines, propellers, and appliances).

(5) That, except as provided in subparagraph (6) of this paragraph, the property transferred hereby may be successively transferred only with the proviso that any such subsequent transferee assumes all the obligations imposed upon the PARTY OF THE SECOND PART by the provisions of this instrument.

(6) That no property transferred by this instrument shall be used, leased, sold, salvaged, or disposed of by the PARTY OF THE SECOND PART for other than airport purposes without the written consent of the Federal Aeronautics Administrator, which shall be granted only if said Administrator determines that the property can be used, leased, sold, salvaged or disposed of for other than airport purpose without materially and adversely affecting the development, improvement operation or maintenance of the airport at which such property is located; Provided, that no structures disposed of hereunder shall be used as an industrial plant, factory, or similar facility within the meaning of Section 23 of the Surplus Property Act of 1944 as amended, unless the PARTY OF THE SECOND PART shall pay to the United States such sum as the War Assets Administrator or his successor in function shall determine to be a fair consideration for the removal of the restriction imposed by this proviso.

***

By acceptance of this instrument, or any right hereunder the PARTY OF THE SECOND PART further agrees with the PARTY OF THE FIRST PART as follows:

(1) That in the event that any of the aforesaid terms conditions, reservations or restrictions is not met, observed, or complied with by the PARTY OF THE SECOND PART or any subsequent transferee, whether caused by the legal inability of said PARTY OF THE SECOND PART or subsequent transferee to perform any of the obligations herein set out, or otherwise, the title, right of possession and all other rights transferred by this instrument to the PARTY OF THE SECOND PART, or any portion thereof, shall at the options of the PARTY OF THE FIRST PART revert to the PARTY OF THE FIRST PART sixty (60) days following the date upon which demand to this effect is made in writing by the Civil Aeronautics Administrator or his successor in function, unless within said sixty (60) days such default or violation shall have been cured was all such terms, conditions, restrictions shall have been met, observed or complied with, in which event said reversion shall not occur and title, right of possession, and all other rights transferred hereby, except such, if any, as shall have previously reverted, shall remain vested in the PARTY OF THE SECOND PARTY, its transferees, successors and assigns.

(2) That if the construction as covenants of any of the foregoing reservations and restrictions recited herein as covenants or the application of the same as covenants in any particular instance is held invalid, the particular reservations or restrictions in question shall be construed instead merely as conditions upon the breach of which the Government may exercise its option to cause the title, right of possession and all other rights transferred to the PARTY OF THE SECOND PART, or any portion thereof, to revert to it, and the application of such reservations or restrictions as covenants in any other instance and the construction the remainder of such reservations and restrictions as covenants shall not be affected thereby.

The document of transfer by its terms creates both conditions and covenants running with the land. These covenants running with the land are valid as such and are supported by adequate consideration and are specifically performable irrespective of whether the condition creates a reverter with reference to the leasehold interest or more. Because of this, the City must comply with each of these covenants or be liable for suit for specific performance of them. Any use contrary to the covenants should be enjoined by the federal government. Covenants running with the land create negative easements appertinent benefiting the land, proprietary interests of the federal government and the public which is an intended beneficiry of them.

2. That the property has been dedicated by implied and express dedication in perpetuity for airport purposes for the benefit of the United States of America and this dedicated public use may not be divested by action of the City.

Public airport use of the United States Government is superior to any public use of any state under the supremacy clause of the Federal Constitution. It is by definition the more necessary public use. It is, moreover, superior to any private use and public property may not be utilized for private purposes. Sweetwater Valley Civic Association vs City of National City 18 Cal 3d 270, 555 P 2d 1099, 133 Cal Rptr 859. (1976) People vs Sperl 54 Cal App 3d 640, 126 Cal Rptr 907 (1976) Sale, moreover, is in specific violation of section 2508A of the Santa Monica Municipal Code which requires that prior to the sale of public property it must be determined that the property is no longer needed for the purpose acquired and that said property or the title thereto is not needed for any public purpose.

3. In addition the City is in violation of Grant Agreement No. 9-04-044-0205, contract No FA-WE-2313 entered into on June 20, 1962, and Grant Agreement no 9-04-044-906, Contract No DO2-FA69WE-1535, executed on July 24, 1968.

These violations are in part as follows:

(a) Paragraph 6 of Part III (sponsor's assurances) provides as follows:

> "The sponsor will operate and maintain in a safe and serviceable condition the Airport facilities thereon and connected therewith which are necessary to serve the aeronautical users of the Airport... and will not permit any activity thereon which would interfere with its use for airport purposes.

(b) In addition, paragraph 2 of part three of the Sponsors' Assurances agreement provides:

> "2. The sponsor agrees that it will operate the Airport as for the use and benefit of the public. In furtherance of this covenant but without limiting its general applicability (and effect), the sponsor specifically agrees that it will keep the airport open to all types, kinds, and classes of aeronautical use without discrimination between such types, kinds, and classes..."

(d) In addition, it is the association's contention section 308 of the Federal Aviation Action of 1958, as amended (49 U.S.C. 1349 (a)) by granting or proposing to grant exclusive uses.

4. In addition, it is the association's position that the City is in violation of Lease agreements between the United States of America and the City, and that while some of the leases have expired by their terms, nevertheless violations of these lease agreements has taken place thereby giving rise to causes of action for breach of contract, damages, and specific performance.

The lease agreements violated include lease agreement no. FA 4-1718, executed July 26, 1961, expiring June 30, 1981; lease no. WE-17024, executed July 2, 1964, and expiring June 30, 1984; lease no. FA65-WE1153 executed April 6, 1965 expiring June 30, 2015; lease no. FA65-WE1194, executed August 25, 1965, and expiring June 30, 2015; lease no. WE-17024, executed April 12, 1963 and expiring June 30, 1983; lease no. DOT-FA72-WE 18308, executed June 30, 1972, and expiring June 30, 1982.

Repeated violations of the Lease Agreements, Government Agreements, and Sponsor's Assurances have occurred as follows:

1. The City has engaged in a process on a non-interim basis of using the airport for non-airport related purposes when, with reasonable efforts, it could have utilized the property for airport related purposes.

2. The City has entered into and adopted a policy of discouraging airport use by the refusal to enter into or to solicit long-term leases for airport related uses. The City has ceased to provide effective management or reasonable maintenance at the airport, and currently, has no manager at the Airport. It has failed to adopt effective programs for pilot education in noise abatement and has failed to adopt modern methods of dealing with noise abatement such as adopted by the City of Torrance, which method of noise abatement and/or pilot training provides for communications between the pilots and the community.

3. The City has failed to enter into long-term leases or to apply for available funds from the Federal Aviation Administration to maintain the airport as a public airport.

4. The City has failed even with the above availability of federal funds to provide modern facilities essential not only to the aviation public but the general public and users of the airport which include but are not limited to instrument lands systems, microwave landings systems, modern vasi and runway lighting systems.

5.The City has discouraged the use of the airport facilities by the failure to adopt plans for the future of the airport and to provide terminal facilities and public access for those persons seeking to utilize the airport as a commuter and reliever facility in interstate commerce.

6. The City has failed to apply for funds or to set up programs to benefit property owners around the airport and to sound proof homes, or acquire aviation easements to the extent that there is any potential damage to homes, even though such funds are available.

7. The city has in fact failed to permit the federal government to spend monies on the airport by its failure to enter into agreements that would permit such expenditure for the benefit of

the public and the community. The reason for such failure is the desire to utilize airport property for the City's own financial gain to the general detriment of the people of the United States of America. It has placed its own financial benefit ahead of the rights of the homeowners surrounding the airport and the general public utilizing the airport, adapted procedures which have made the airport and flying less safe that it could be, more environmentally burdensome that it need be, should be or could be. This was with the desired aim of keeping the public surrounding the airport aroused and antagonistic toward the airport in order that there would be political support for the closure of the airport, when calm and prudent public planning would require that a continuing dialogue be build between the citizens and airport users.

8. The City has entered into a policy of failing to appoint persons to the airport commission, that have a knowledge of the process or operating an airport, or a knowledge of the needs of the community with regard to an airport.

9. The City has adopted under the guise of regulations a means of restricting the use of the airport with no rational relationship to any liability which might be imposed on the City through airport use and which exceed the proprietary powers granted to a municipality.

10. The City has a design and scheme to incrementally, step by step, eradicate and reduce the operations of the airport and deny the people of the United States of America full use of the facilities of a general aviation, commuter, reliever facility. Recently, it has, without the benefit of a Federal Environmental Impact Statement or State Environmental Impact Report, reduced further the hours of operations of the Santa Monica Airport as part of a design and scheme to close the Airport in small increments to void opposition.

11. The City has expended public funds for the purpose of planning uses which are inconsistent with the legally authorized use of the entire airport property and has and is engaged in the process of evicting tenants utilizing the airport for airport related purposes and of supplanting them with non-airport related tenancies. It has refused to withdraw the eviction of McBreen and Associates, even though this company has been on the Airport for twenty-five years and provides insurance services and private accident prevention activities exclusively in the aircraft industry.

This list of violations is submitted in summary form as a complaint to advise the FAA of the charges made in order that the FAA may set a date for an administrative hearing to determine the validity of the charges and whether further action should be taken. The Association and its attorneys, Knickerbocker, Perry & Fichter, are in the process of writing an exhaustive and lengthy brief on each of these issues to further amplify the charges.

The Federal Aviation Administration has the duty and the responsibility, in fact, the sole duty and responsibility to protect the interests of the United States of America and to enforce these agreements. The Association urges the Federal Aviation Administration, through its Chief Counsel to convene a hearing for evaluation of the charges made by the Association, at which time, the Association may present evidence with regard to each of the charges, and the City may respond with regard its degree of compliance and and defense it might have. It is urged that the administrative hearing be convened within the next 60 days and that the briefing schedule be set forth for the Association and the City.

Very truly yours,

Santa Monica Airport Association

By: _____
Paul Blackman, President

By: _____
James A. Barton, Vice President

Part III–SPONSOR'S ASSURANCES

In order to furnish the assurances required by the Act and Regulations the Sponsor hereby covenants and agrees with the United States, as follows:

1. These covenants shall become effective upon acceptance by the Sponsor of an offer of Federal aid for the Project or any portion thereof, made by the FAA and shall constitute a part of the Grant Agreement thus formed. These covenants shall remain in full force and effect throughout the useful life of the facilities developed under this Project, but in any event not to exceed twenty (20) years from the date of said acceptance of an offer of Federal aid for the Project.

2. The Sponsor will operate the Airport as such for the use and benefit of the public. In furtherance of this covenant (but without limiting its general applicability and effect), the Sponsor specifically agrees that it will keep the Airport open to all types, kinds, and classes of aeronautical use without discrimination between such types, kinds, and classes: *Provided*, That the Sponsor may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the Airport as may be necessary for the safe and efficient operation of the Airport; *And Provided Further*, That the Sponsor may prohibit or limit any given type, kind, or class of aeronautical use of the Airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

3. The Sponsor will not grant or permit any exclusive right for the use of the airport forbidden by Section 308 of the Federal Aviation Act of 1958, and will otherwise comply with all applicable laws. In furtherance of this covenant (but without limiting its general applicability and effect), the Sponsor specifically agrees that, unless authorized by the Administrator, it will not, either directly or indirectly, grant or permit any person, firm, or corporation the exclusive right for the conduct of any aeronautical activities on the Airport, including but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity: *Provided*, That the prohibition against the grant or permit of an exclusive right as set forth herein in no way alters the rights or obligations of the Sponsor under a surplus property instrument of transfer pursuant to which surplus property was conveyed to the Sponsor by the United States pursuant to the *Surplus Property Act of 1944, (61 Stat. 678), as amended.*

4. The Sponsor agrees that it will operate the Airport for the use and benefit of the public, on fair and reasonable terms, and without unjust discrimination. In furtherance of this covenant (but without limiting its general applicability and effect), the Sponsor specifically covenants and agrees:

a. That in its operation and the operation of all facilities on the airport, neither it nor any person or organization occupying space or facilities thereon will discriminat against any person or class of persons by reason of racc color, creed, or national origin in the use of any of the fa cilities provided for the public on the Airport.

b. That in any agreement, contract, lease, or other ar rangement under which a right or privilege at the Airpor is granted to any person, firm, or corporation to render t the public any service (including the furnishing or sale o any aeronautical parts, materials, or supplies) essential t the operation of aircraft at the Airport, the Sponsor wil insert and enforce provisions requiring the contractor:

(1) to furnish said service on a fair, equal, and no unjustly discriminatory basis to all users thereof and

(2) to charge fair, reasonable, and not unjustly dis criminatory prices for each unit or service; *Pro vided*, That the contractor may be allowed to mak reasonable and nondiscriminatory discounts, re bates, or other similar types of price reductions t volume purchasers.

c. That it will not exercise or grant any right or priv ilege which would operate to prevent any person, firm, o corporation operating aircraft on the Airport from per forming any services on its own aircraft with its own em ployees (including, but not limited to maintenance and re pair) that it may choose to perform.

d. In the event the Sponsor itself exercises any of th rights and privileges referred to in subsection b, the serv ices involved will be provided on the same conditions a would apply to the furnishing of such services by contrac tors or concessionaires of the Sponsor under the provision of such subsection b.

5. Nothing contained herein shall be construed to prohibi the granting or exercise of an exclusive right for the furnish ing of nonaviation products and supplies or any service of nonaeronautical nature or to obligate the Sponsor to furnisl any particular nonaeronautical service at the Airport.

6. The Sponsor will operate and maintain in a safe an serviceable condition the Airport and all facilities thereo and connected therewith which are necessary to serve th aeronautical users of the Airport other than facilities owne or controlled by the United States, and will not permit an activity thereon which would interfere with its use for air port purposes: *Provided*, That nothing contained herein shal be construed to require that the Airport be operated for aero nautical uses during temporary periods when snow, flood, o other climatic conditions interfere with such operation an maintenance; *And Provided Further*, That nothing herei shall be construed as requiring the maintenance, repair, res toration or replacement of any structure or facility which i substantially damaged or destroyed due to an act of God o other condition or circumstance beyond the control of th Sponsor.

7. Insofar as it is within its power and reasonably possible, the Sponsor will, either by the acquisition and retention of easements or other interests in or rights for the use of land or airspace or by the adoption and enforcement of zoning regulations, prevent the construction, erection, alteration, or growth of any structure, tree, or other object in the approach areas of the runways of the Airport, which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Section A of FAA Technical Standard Order No. N18, or Advisory Circular (AC) No. 150/5300-1, whichever is applicable according to the currently approved airport layout plan. In addition, the Sponsor will not erect or permit the erection of any permanent structure or facility which would interfere materially with the use, operation, or future development of the Airport, in any portion of a runway approach area in which the Sponsor has acquired, or may hereafter acquire, property interests permitting it to so control the use made of the surface of the land.

8. All facilities of the Airport developed with Federal aid and all those usable for the landing and taking off of aircraft, will be available to the United States at all times, without charge, for use by military and naval aircraft in common with other aircraft, except that if the use by military and naval aircraft is substantial, a reasonable share, proportional to such use, of the cost of operating and maintaining facilities so used, may be charged. Unless otherwise determined by the FAA, or otherwise agreed to by the Sponsor and the using agency, substantial use of an airport by military and naval aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the FAA, would unduly interfere with use of the landing area by other authorized aircraft, or during any calendar month that:

a. Five (5) or more military or naval aircraft are regularly based at the airport or on land adjacent thereto; or

b. The total number of movements (counting each landing as a movement and each takeoff as a movement) of military or naval aircraft is 300 or more, or the gross accumulative weight of military or naval aircraft using the Airport (the total movements of military or naval aircraft multiplied by gross certified weights of such aircraft) is in excess of five million pounds.

9. Whenever so requested by the FAA, the Sponsor will furnish without cost to the Federal Government, for construction, operation and maintenance of facilities for air traffic control activities, or weather reporting activities and communication activities related to air traffic control, such areas of land or water, or estate therein, or rights in buildings of the Sponsor as the FAA may consider necessary or desirable for construction at Federal expense of space or facilities for such purposes. The approximate amounts of areas and the nature of the property interests and/or rights so required will be set forth in the Grant Agreement relating to the Project. Such areas or any portion thereof will be made available as provided herein within 4 months after receipt of written request from the FAA.

10. The Sponsor will furnish the FAA with such annual or special airport financial and operational reports as may be reasonably requested. Such reports may be submitted on forms furnished by the FAA, or may be submitted in such manner as the Sponsor elects so long as the essential data a furnished. The Airport and all airport records and documen affecting the Airport, including deeds, leases, operation a use agreements, regulations, and other instruments, will made available for inspection by any duly authorized repr sentative of the FAA upon reasonable request. The Spons will furnish to the FAA, upon request, a true copy of a such document.

11. The Sponsor will not enter into any transaction whi would operate to deprive it of any of the rights and powe necessary to perform any or all of the covenants made herei unless by such transaction the obligation to perform all su covenants is assumed by another public agency found by t FAA to be eligible under the Act and Regulations to assun such obligations and having the power, authority, and fina cial resources to carry out all such obligations. If an arrang ment is made for management or operation of the Airport b any agency or person other than the Sponsor or an employ of the Sponsor, the Sponsor will reserve sufficient rights ar authority to insure that the Airport will be operated ar maintained in accordance with the Act, the Regulations, ar these covenants.

12. The Sponsor will keep up to date at all times an airpo layout plan of the Airport showing (1) the boundaries of th Airport and all proposed additions thereto, together with th boundaries of all offsite areas owned or controlled by th Sponsor for airport purposes, and proposed additions theret (2) the location and nature of all existing and proposed ai port facilities and structures (such as runways, taxiway aprons, terminal buildings, hangars, and roads), including a proposed extensions and reductions of existing airport facil ties; and (3) the location of all existing and proposed nor aviation areas and of all existing improvements thereon. Suc airport layout plan, and each amendment, revision, or mod fication thereof, shall be subject to the approval of the FA which approval shall be evidenced by the signature of a dul authorized representative of the FAA on the face of the ai port layout plan. The Sponsor will not make or permit th making of any changes or alterations in the Airport or an of its facilities other than in conformity with the airport la out plan as so approved by the FAA, if such changes or a terations might adversely affect the safety, utility, or eff ciency of the Airport.

13. Insofar as is within its power and to the extent reasor able, the Sponsor will take action to restrict the use of lan adjacent to or in the immediate vicinity of the Airport t activities and purposes compatible with normal airport opera tions including landing and takeoff of aircraft.

14. If at any time it is determined by the FAA that ther is any outstanding right or claim of right in or to the Airpor property, other than those set forth in Part II, paragraph 7(a), 7(b), and 7(c), the existence of which creates an undu risk of interference with the operation of the Airport or th performance of the covenants of this Part, the Sponsor wi acquire, extinguish, or modify such right or claim of righ in a manner acceptable to the FAA.

15. Unless the context otherwise requires, all terms use in these covenants which are defined in the Act and th Regulations shall have the meanings assigned to them therein

Part IV–PROJECT AGREEMENT

If the Project or any portion thereof is approved by the FAA, and an offer of Federal aid for such approved Project is accepted by the Sponsor, it is understood and agreed that all airport development included in such Project will be accomplished in accordance with the Act and the Regulations, the plans and specifications for such development, as approved by the FAA, and the Grant Agreement with respect to the Project.

IN WITNESS WHEREOF, the Sponsor has caused this Project Application to be duly executed in its name, this 29th day of February, 19 68

City of Santa Monica
(Name of Sponsor)

By Booton L. Remely

City Manager Pro Tem.
(Title)

OPINION OF SPONSOR'S ATTORNEY

I HEREBY CERTIFY that all statements of law made in this Project Application and all legal conclusions upon which the representations and covenants contained herein are based, are in my opinion true and correct.

City Attorney
(Title)

2/29/68
(Date)

AWP FYI; Pls return to 7

CITY OF
SANTA MONICA
CALIFORNIA

OFFICE OF THE CITY ATTORNEY
1685 Main Street
Santa Monica, California 90401
Telephone: (213) 393-9975

May 11, 1982

J. E. Murdock III
Chief Counsel, Federal Aviation Administration
800 Independence Avenue S.W.
Washington, D.C. 20591

Re: Santa Monica Airport

Dear Mr. Murdock:

As was indicated in your meeting of April 27, 1982 with Assistant City Attorney Stephen Shane Stark, the City of Santa Monica desires to resolve amicably the dispute regarding the future plans for Santa Monica Airport. The report of our planning consultants is expected to be completed in May, 1982. A more detailed response to your concerns will be made promptly thereafter.

In the meanwhile, we make the following assurances to you relative to the question of evictions and rent increases for existing airport lessees. The City will not initiate any action to evict existing lessees (except for breach of terms of tenancy) nor will it raise the rents of any existing lessees during the pendency of the planning process. With respect to terminations for breach of tenancy, we will give you advance notice appropriate under the circumstances of the breach.

The foregoing does not apply to Briles Wing & Helicopter or its subtenants. As you may be aware, the City initiated legal action to evict Briles because of its safety record. On October 30, 1981, Briles and its subtenants executed a stipulation for entry of judgment in which they were permitted to occupy the leased premises until April 30, 1982, in exchange for giving up the right to contest eviction proceedings. On May 7, 1982, the Superior Court of the State of California denied Briles' motion to set aside this stipulation for judgment. A copy of the papers in this matter is attached. It continues to be the position of the City that the Briles matter is unrelated to the City's overall airport policy. (You should be advised that Danforth & Associates, a Briles subtenant, has been approved by the City as a subtenant of another lessee at the Santa Monica Airport.)

Additionally, the assurances do not apply to Aerosonics, Inc. The City allowed this company to occupy a portion of a vacant hangar for a three-month fixed term commencing in October, 1981, and ending December 31, 1981. Aerosonics, which performs no aviation functions, has continued to occupy the premises without paying rent. The City has filed an unlawful detainer action for possession. The Aerosonics eviction is wholly unrelated to airport policy.

We are confident that future discussions between us will result in a prompt, amicable resolution of the controversy that will accommodate the reasonable concerns of all. If you have any questions, please do not hesitate to contact this office.

Sincerely yours,

Robert M. Myers

ROBERT M. MYERS
City Attorney

RMM:SSS:se
enclosures

DANFORTH & ASSOCIATES
3013 AIRPORT AVENUE
SANTA MONICA, CALIFORNIA 90405
(213) 390-9554

March 30, 1982

Mr. J. E. Murdock, Chief Counsel, AGC-1
Attention: Enforcement Docket (AGC-209)
Office of the Chief Counsel
Federal Aviation Administration
Department of Transportation
800 Independence Avenue S.W.
Washington, D.C. 20591

Mr. DeWitt Lawson
Regional Counsel
Western Region
Federal Aviation Administration
Department of Transportation
AWP-7
P. O. Box 92007
World Way Postal Center
Los Angeles, California 90007

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REGIONAL COUNSEL
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Re: Complaints of Violations of the Federal Aviation Act of 1938 Contained Therein, Sponsor's Assurances between the City of Santa Monica and the Federal Aviation Administration; and Violation of Covenants, Conditions, Restrictions from Federal Government to City of Santa Monica on Transfer Agreement.

Gentlemen:

Pursuant to the procedures set forth in Federal Aviation Regulations, Part 13 (Investigation and Enforcement Procedures) revised November 5, 1979, and other provisions of law, a request is hereby made that the Chief Counsel and Regional Counsel for the Federal Aviation Administration investigate violations by the City of Santa Monica of the Transfer Agreement dated August 10, 1948, Grant Agreements with the United States of America, and Sponsor's Assurances.

Additional request is hereby made that the FAA take immediate action, as time is of the essence, under Federal Aviation Regulations, Part 13, Subpart B, Section 13.11, Paragraphs (b), (1) and (2) that the approproate FAA official issue a "Warning Notice" and "Letter of Correction" for violation of Sponsor's Assurances in that the City of Santa Monica has not kept up to date at all

times an airport layout plan of the Airport showing (1) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars, and roads), including all proposed extensions and reductions of existing airport facilities; and (2) the location of all existing and proposed non-aviation areas and of all existing improvements thereon, and that the City of Santa Monica has not requested or received an approval by a duly authorized representative of the FAA on the face of the airport layout plan for each amendment, revision, or modification required by the airport layout plan, and further the City of Santa Monica, its City Council, City Manager, Acting Airport Director, and City Attorney and co-counsel, have made and are permitting the making of changes and alterations to the Airport and its facilities other than in conformity with the airport layout plan as approved by the FAA, and such are causing alterations which adversely affect the safety, utility, and efficiency of the Airport.

Further request is hereby made that the Chief Counsel, Chief Counsel Deputy, Assistant Chief Counsel, and Regional Counsel for the Federal Aviation Administration investigate violations by the City of Santa Monica pursuant to the procedures set forth in Federal Aviation Regulations, Part 13, (Sub-Part A - 13.3, 13.5, 13.7; Sub-Part C - 13.13 and 13.15) in that City of Santa Monica, its officials, employees, consultants, and advisors, have (a) not operated the airport for the use and benefit of the public, (b) not operated the airport for use and benefit of the public on fair and reasonable terms, and have unjustly discriminated against leases and sub-leases, (c) granted, by their actions, exclusive use and right to the airport thus discriminating, (d) failed to meet and violated their contractual obligations under the Instrument of Transfer.

PERSON FILING COMPLAINT

Gary Danforth, owner of Danforth and Associates, a Fixed Base Operation, at 3013 Airport Avenue, Santa Monica, California 90405, phone (213) 390-9554, duly approved to operate by the City of Santa Monica on May 14, 1980, as a sub-tenant of Briles Wing & Helicopter, Inc., who had an expired lease which converted to month-to-month tenancy.

Danforth and Associates is an airport related business, which activities include Flight Instruction, Ground Instruction, Aircraft rental, Sales, Pilot Supplies, and Aviation Consultant.

OPERATIONAL CONDITIONS

Danforth and Associates has only been conducting business at the Santa Monica Airport since May 14, 1980, but as with any starting business, has incurred those start-up expenses required by any business. Such expenses and the initial start of this business was based on the opinion that the City of Santa Monica, after conducting various studies and legal opinions, was going to operate the airport under its current agreements with the Federal Government, the FAA, and its lease holders. (Exhibit A)

Being able to conduct a normal aviation related business at this airport has been impossible due to a series of actions taken by the City of Santa Monica that has caused my business to operate in a disasterous climate which has impaired my ability to deal with employees, customers, suppliers, and the public. The controversy that has been created by the City's evictions, vote to Close the Airport; inconsistent statements, studies, resolutions, which were made, adopted and rescinded, advocating the retention and development of the airport as an airport; or its retention as an airport but with limited services and right of access to the flying public; and its adoption of restrictive ordinances and procedures which have further restricted the public use of the airport and the viability of Danforth and Associates to maintain and offer aviation services. Further, this environmentally hostile climate has placed undue financial burden on my business, forcing me to operate in a continually detrimental economic condition. Outlined below are just a few of the actions taken by the City:

In February, 1981, the Santa Monica City Council voted to evict all tenants that had lapsed leases and were on month-to-month tenancies, and their sub-tenants from the Santa Monica Airport, which included Briles Wing & Helicopter, Inc., including Danforth and Associates, a sub-tenant, said evictions effective February, 1982. (Exhibit B)

On June 1, 1981, the City of Santa Monica served by Certified Mail, a Notice of Termination of Tenancy, sent to Danforth and Associates, for eviction on or before July 15, 1981. This action taken against Briles Wing & Helicopter, Inc. and his sub-tenants is separate from the February, 1981, eviction. (Exhibit C)

On June 23, 1981, the City Council of Santa Monica voted to Close the Airport as soon as possible and to terminate, either by eviction or through negotiations, all users of the airport. (Exhibit C)

On July 30, 1981, the City Attorney, Robert M. Myers, for the City of Santa Monica, issued a Notice that the City will entertain requests for extensions beyond the termination date from certain aviation-related leases if necessary for uninterrupted operation of a general aviation airport. (Exhibit E)

On August 3, 1981, the Santa Monica City illegally had served, to a customer of mine, Donald H. Brandsen, while I was on vacation, a Summons for Unlawful Detainer and Damages. (Exhibit F)

On October 29, 1981, a Stipulation for Entry of Judgement: Superior Court of the State of California for the County of Los Angeles, No. WEC 070069, was signed by me under duress. This stipulation requires Briles Wing & Helicopter, Inc. and all sub-tenants to vacate and remove the existing structures on Plot No. 6, effective April 30, 1982. (Exhibit G)

March 30, 1982

On February 4, 1982, an eviction notice was sent by Briles Wing & Helicopter, Inc. to Danforth and Associates to vacate the premises. (Exhibit H)

VIOLATIONS

(First violation)

Sponsor's Assurances: City is required to keep an FAA approved airport layout plan and will not make or permit the making of any changes or alterations in the Airport or its facilities other than in conformity with the airport layout plan as so approved by the FAA, if such changes or alterations might adversely affect the safety, utility, or efficiency of the Airport.

Danforth and Associates has been under a series of continual attacks by the City of Santa Monica to evict us by the removal of Briles Wing & Helicopter, Inc. and its facility of which we are a sub-tenant. These actions took place February, June, and August of 1981.

Danforth and Associates is now under an eviction effective March 15, 1982, including Briles Wing & Helicopter, Inc., Aircraft & Recovery Bureau, Inc., Paul R. Briles, Inc., Transco Products, and other sub-tenants of Briles Wing & Helicopter, Inc. (Exhibits B, D, C, D, F, G)

Violations: The City of Santa Monica failed to either notify or receive FAA approval of the above evictions and has not noted or received FAA approval on the airport layout plan. The City's actions, which will require the demolition of one of the major Fixed Base Operators and the elimination of the use of that portion of the Airport for airport services will have an adverse effect on the utility and efficiency of the airport. The City of Santa Monica has not and is not maintaining a true airport layout plan and that such actions on the part of the City are due either to a mistake of which it is aware or had reason to be aware, or to the fraudulent intent of the City to create an economic and physical blight at the airport for purposes of closing the airport as soon as possible without meeting its contractual obligations with the FAA, Federal Government and the people of the United States.

VIOLATIONS

(Second violation)

Sponsor's Assurances: City agreed that it will operate the airport as such for the use and benefit of the public.

Danforth and Associates, as well as other sub-tenants of lease holders and prior lease holders, tie-down users, non-aviation users, pilots and the public at large, have been and are currently being denied the use

and benefit of the airport. The City of Santa Monica has placed continued restrictions, ordinances, and evictions of business, causing approximately seven Fixed Base Operators to vacate the Santa Monica Airport in the past eight or nine years. The City Council passed a blanket Eviction Notice to all Fixed Base Operators and passed a resolution on June 23, 1981, to Close the Santa Monica Airport as soon as possible. This was the first time any City Council of Santa Monica ever voted and passed such a resolution, even though at many other Council meetings over the years considered, and discussed in open chamber meetings and closed executive meetings, to close the airport.

> Violations: The City Council of Santa Monica, both as a Council and as individuals, have acted in total disregard to the contractual obligations of the City with the Government of the United States, and their obligations as public servants to operate in trust a duly purchased public air park by the citizens of Santa Monica. The City and the Council further have violated their assurance that the airport will operate for the use and benefit of the public when, through a series of actions, they have manifested the intention of closing the airport and devoting the acreage to uses which would supposedly return more revenue or furnish greater public needs, thereby forcing existing and prior businesses from the airport due to creating an I DON'T KNOW IF THE AIRPORT WILL BE THERE in the minds of the public.

VIOLATIONS

(Third violation)

> Sponsor's Assurances: City agreed that it will not make any agreement, contract, lease, or other arrangement under which a right or privilege is granted to any person, firm, or corporation to render service, furnish any parts, furnish any materials, furnish any supplies essential to the operations of aircraft at this airport. The City will insert and enforce provisions requiring contractors to furnish good, prompt, efficient service including furnishing service, parts, materials, and supplies adequate to meet all demands for its service at the airport, furnish a service on a fair, equal, non-discriminatory basis to all users of the service, charge fair, reasonable, non-discriminatory prices for each unit of sale or service.

Danforth and Associates is being evicted as a sub-tenant of Briles Wing & Helicopter, Inc. as a result of actions by the City. The City also is refusing to negotiate on vacant land and/or buildings available at the City of Santa Monica Airport, which the City could lease or even rent said property on a month-to-month basis. The City has refused to negotiate with Briles Wing & Helicopter, Inc. to allow it to continue to conduct business at the present location, forcing Danforth and Associates to relocate and to pay anywhere from four (4) to six (6) times present rent for smaller and less desirable space from other major leaseholders on the Santa Monica Airport. Danforth and Associates made numerous inquiries and formal requests to the City for relocation

on the airport, however, these negotiations ended with a continuous theme which was that of not allowing any increase in my business activities, not wanting me to conduct maintenance, even maintenance on the aircraft we rent, and an over-all attitude of suppression of free enterprise. These remarks, conversations, and meetings or lack thereof was a result of my (Gary Danforth) personal attempt to deal with the Assistant City Attorney, Assistant City Manager and Airport Commission for new quarters. Furthermore, I made an attempt to acquire the facilities of Briles Wing & Helicopter, Inc. by requesting the City to exercise its option by lease agreement, requiring Briles not to remove its hangars and facilities but by requesting the City to let Danforth and Associates purchase from Briles the facilities and enter into a lease with the City. The City's position was not to arbitrate on the Briles facilities or entertain any action by anyone to purchase the facilities, being Parcel Six (6) on the Santa Monica Airport, thus requiring the complete removal of these hangars off the airport. Also, I made an attempt to lease Hangars T-200 and T-201 with the same result and they still remain dormant. (Exhibit I)

Violations: The City of Santa Monica shows by its actions through the suppression and curtailment of those businesses who are presently existing on the Santa Monica Airport without long term leases as discriminating practices in that the City is and has been making every effort to either curtail the operation of these businesses, or eliminating them altogether from the use of the airport. Also, Danforth and Associates is being refused and not being allowed to increase the scope of its business from actions taken by the City Council, City Attorney, Assistant City Attorney, City Manager, Assistant City Manager, Acting Airport Director, Airport Commission, employees of the City of Santa Monica and persons and firms hired by the City. That the City and all persons and firms acting in behalf of the City either knowingly or unknowingly are participating in a fraud to defraud the Government of the United States and its citizens through consistent violations of the Sponsor's Assurances for the purpose of closing the airport as soon as possible. This impact on the airport is resulting in an ever increasing loss of business, and business on the airport.

VIOLATIONS

(Fourth violation)

Sponsor's Assurances: City agreed that it will adopt and enforce zoning ordinances, regulations, easements, other interests in lands or air space and will not allow growth, or structures which can cause a hazard to landings, take-offs, and maneuvering of aircraft at this airport.

The City Council directed the Airport Commission not to go to the Los Angeles Planning Commission and try to stop the construction of homes adjacent to the airport at Bundy and Ocean Park Boulevard. The zoning directly adjacent to the Santa Monica Airport, in the past, was zoned improperly by allowing R-1 to be built back to back with the Santa Monica Airport with

no noise abatement or consideration of those people at that time or that in the future might have been of different circumstances. The property adjacent to the Santa Monica Airport, if properly zoned, could have been Commercial or Light Industry, which would have been more compatible with the airport and all surrounding properties. (Minutes of City Council and Airport Commission)

Violations: The City has taken no action which would have lessened the noise on affected homes; allowed the growth and development of homes up next to the airport boundaries; or rezoned, regulated, or established easement rights or other interest in lands or air space that are now and have been the leading hazards to landing, take-offs, and maneuvering of aircraft at this airport. The City's lack of action has impacted on the airport's use of its runways and has resulted in many regulations and directives and restrictive operations in departing, arriving, and maneuvering within the airport traffic area. This continuing policy of no action on the part of the City to regulate outside the boundaries of the airport but to keep applying increasing restrictive procedures on the departure, arrival, and maneuvering of aircraft about the airport is creating a hazard due to the increased work load placed on pilots during critical phases of flight. In addition, this practice continues to eliminate the effective use of the airport and brings closer the day the airport could be closed due to lack of usage.

VIOLATIONS

(Fifth violation)

Sponsor's Assurances: City agreed that it will adopt and enforce zoning ordinances, regulations, easements, other interests in lands or air space and will not allow growth, or structures which can cause a hazard to landings, take-offs, and maneuvering of aircraft at this airport.

The City of Santa Monica adopted an ordinance "restricting touch-and-gos, stop-and-gos and low approach operations Saturdays, Sundays and holidays". Gary Danforth, on Saturday, April 22, 1978, did execute a low approach at the Santa Monica Airport and was served a violation by mail. I was forced to go to court and, after several months and expenditures of time and money, was found not guilty and case dismissed. (Exhibit J)

Violations: The City of Santa Monica shows, by its negligence and continued illegal city ordinances, the complete disregard for the general public that they were elected to office to represent. The City of Santa Monica over the years has taken a stand that they can and will pass at their whim any ordinance, right or wrong, and it is up to the offender to take legal action in court to defend their position and rights. The impact that the City Council has brought upon the City is

March 30, 1982

not only devastating in restrictions but costly to the residents of Santa Monica and users, operators, of the Santa Monica Airport. Further evidence and supporting documentation as to the violation will be furnished at a later date.

The City officials of the City of Santa Monica, 1685 Main Street, Santa Monica, California 90401, who are subjects of this Complaint, are:

Mayor Ruth Yannatta Goldway

Santa Monica City Council:
Mayor Pro-Tem Ken Edwards
Councilman James Conn
Councilman William Jennings
Councilwoman Dolores Press
Councilwoman Christine Reed
Councilman Dennis Zane

City Attorney Robert Myers
Assistant City Attorney Stephen Stark
City Manager John Alschuler
Assistant City Manager John Jalili

Santa Monica Airport Commission:
Chairman Winton Sears
Commissioner James Hoyt
Commissioner Lincoln Vaughn
Commissioner Natalie McConnell
Commissioner Christine Sharp
Liaison - James Conn

This list of Violations is submitted in summary as a Complaint to advise the Federal Aviation Administration of the charges made in order that the Federal Aviation Administration will take immediate action in stopping the City from the destruction of buildings on Parcel 6 at the Santa Monica Airport and the possible demise of Danforth and Associates as a viable Fixed Base Operation. The Federal Aviation Administration has the duty and responsibility, in fact the sole duty and responsibility, to protect the interests of the United States of America and to enforce these agreements.

Very truly yours,

DANFORTH AND ASSOCIATES

Gary D. Danforth

GDD:fsk
encls.