U.S. Department
of Transportation

Office of Airport Compliance
and Management Analysis

800 Independence Ave, SW.
Washington, DC 20591

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JAN 21 2022

PART 16 DOCKETS

January 21, 2022

Jol A. Silversmith, Esq.
Barbara M. Marrin, Esq.
KMA Zuckert LLC
888 17th Street, N.W.,
Suite 700 Washington, DC 20006

Jon J. Olafson
Paul Rupprecht
Lewis Brisbois Bisgaard and Smith, LLP
1700 Lincoln Street, Suite 4000
Denver, Colorado 80203

Re: Jason Theuma and Paragon Skydive, LLC v. State of Arizona, FAA Docket 16-19-16

Dear Ms. Marrin, and Messrs. Silversmith, Olafson, Rupprecht:

Enclosed is the Federal Aviation Administration (FAA) Director's Determination with respect to the above-referenced matter finding that the State of Arizona is in violation of its Federal obligations including Grant Assurance 22, *Economic Discrimination*, unjustly discriminating against Paragon by imposing high and unreasonable skydiving liability and products and completed operations insurance; restricting solo skydiving operations; and imposing higher 10% gross receipts fees on Paragon compared to established 1.5% fee imposed on similarly-situated air tour operators.

Furthermore, the Respondent is required to submit additional information identified to show its compliance regarding requirements for commercial general liability insurance aircraft; parking fees; gate access fees; additional space at the airport; and reporting of new employees.

The reasons for the finding of noncompliance are set forth in the enclosed Director's Determination.

The Director's Determination does not constitute a Final Agency Decision and order subject to judicial review. [14 CFR § 16.247(b)(2)] A party adversely affected by the Director's

Determination once issued may appeal the initial determination to the FAA Associate Administrator for Airports pursuant to 14 CFR § 16.33(c) within 30 days after the service of the Director's Determination.

Sincerely,

KEVIN WILLIS

Digitally signed by KEVIN WILLIS
Date: 2022.01.21 14:20:32 -05'00'

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

Enclosure

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JAN 21 2022

PART 16 DOCKETS

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

JASON THEUMA and PARAGON SKYDIVE, LLC, an Arizona Limited Liability Company,

Complainant,

v.

THE STATE OF ARIZONA,

Respondent.

FAA Docket No. 16-19-16

DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA), based on the formal Complaint filed in accordance with the *Rules of Practice for Federally-Assisted Airport Enforcement Proceedings*, 14 CFR Part 16.

Jason Theuma and Paragon Skydive (Paragon) filed a formal complaint against the State of Arizona Department of Transportation (ADOT) as owner and sponsor of the Grant Canyon National Park Airport (Airport). Paragon is a commercial aeronautical tenant at the Airport with a lease that expires January 31, 2021. The lease term includes two one-year extensions (FAA Exhibit 1, Item 1, Exhibit 40, pp. 8-9).

Paragon alleges that the Airport has violated Grant Assurance 22, *Economic Nondiscrimination*, and Grant Assurance 23, *Exclusive Rights*, as well as violations of the Anti-Head Tax Act (AHTA), 49 U.S.C. § 40116. Specifically, Paragon alleges "unjust discrimination against a commercial aeronautical activity seeking airport access and establishment of arbitrary and unjustly discriminatory rates and standards for a commercial aeronautical activity seeking airport access …." (FAA Exhibit 1, Item 1, p. 2).

ADOT denies these allegations and requests that the matter be dismissed. ADOT states that Paragon executed a lease with ADOT on March 4, 2016 which provided Paragon the right to conduct skydiving operations. After several lease extensions and extensive negotiations, the parties executed a new lease on January 31, 2018, with two one-year extensions through January 31, 2021 (the 2018 Lease) (FAA Exhibit 1, Item 5, pp. 4-6). ADOT claims that Paragon's issues concern the lease terms that Paragon agreed to and should not be questioned here.

Based on the evidence of record in this proceeding, the Director, FAA Office of Airport Compliance and Management Analysis (Director) finds that the State of Arizona Department of Transportation is in violation of Grant Assurance 22, *Economic Nondiscrimination.*

II. PARTIES

A. The Respondent

The Airport is owned by the State of Arizona and operated through ADOT as a public-use airport located in Tusayan, in unincorporated Coconino County, Arizona. It is located approximately seven (7) miles from the South Rim of the Grand Canyon. The Airport accommodates commercial services, scenic tours, charter flights, and military operations. The Airport had 52,144 aircraft operations for the twelve-month ending August 31, 2019 (FAA Exhibit 1, Item 16).

The development of the Airport was financed in part with FAA Airport and Improvement Program (AIP) funding, authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. § 47101, *et seq*. Between 1982 and 2020, the Airport received approximately $61.8 million in AIP funding (FAA Exhibit 1, Item 20.) Thus, ADOT is obligated to comply with the FAA sponsor grant assurances and related Federal law, 49 U.S.C. § 47107.

The Federal Government also conveyed Federal surplus property under Section 16 or Section 23 to the State of Arizona for the Airport (FAA Exhibit 1, Item 16). ADOT is obligated to comply with the covenants included in any Federal deeds of conveyance.

B. The Complainant

Paragon is an Arizona limited liability company formed by Jason Theuma. In August 2013, shortly after establishing Paragon Skydive, Mr. Theuma applied to ADOT to open a commercial skydiving operation on the Airport (FAA Exhibit 1, Item 1, p. 2). Paragon became a commercial aeronautical user at the Airport in March 2016 (FAA Exhibit 1, Item 1, p. 1).

III. PROCEDURAL HISTORY

1. Complainant Jason Theuma and Paragon Skydive, LLC filed a Part 16 Complaint against the State of Arizona, Arizona Department of Transportation (ADOT) on December 16, 2019 (FAA Exhibit 1, Item 1).

2. FAA filed a Notice of Docketing on January 16, 2020 (FAA Exhibit 1, Item 2).

3. The State of Arizona filed a Motion to Dismiss the Complaint of Paragon Skydive, LLC on April 20, 2020 (FAA Exhibit 1, Item 6).

4. Complainant Jason Theuma and Paragon Skydive, LLC filed Complainants' Opposition to Respondent' Motion to Dismiss on May 11, 2020 (FAA Exhibit 1, Item 7).

5. The State of Arizona filed a Reply in Support of Motion to Dismiss the Complaint of Paragon Skydive, LLC, dated June 19, 2020 (FAA Exhibit 1, Item 9).

6. FAA issues Order for Extension of Time for Respondent to File Answer, dated October 8, 2020 (FAA Exhibit 1, Item 13).

7. See Index for other administrative filings (FAA Exhibit 1).

B. **Background**

C. **Factual Background**

1. In 2013, Paragon requested that ADOT allow it to operate commercial tandem skydiving at the Airport.

2. On June 29, 2015, the FAA performed an inspection at the Airport to evaluate the feasibility of integrating skydiving into ground and flight airport operations.

3. On September 17, 2015, the FAA issued its Safety Risk Assessment report (Report). The Report identified actions to be taken by the Airport to mitigate risks. The FAA concluded that if the mitigation efforts were implemented, "it is feasible from a safety perspective to introduce parachuting operations" at the Airport (FAA Exhibit 1, Item 1, Exhibit 5, pp. 2-3).

4. On March 4, 2016, Paragon executed a lease with ADOT, which provided Paragon the right to begin skydiving operations at the Airport. The initial lease term expiration was December 31, 2016. Over the next two years, the parties signed a total of six (6) lease amendments.

5. On January 31, 2018, the parties executed the 2018 Lease with a term through January 31, 2021, including two one-year extensions (FAA Exhibit 1, Item 5, pp. 4-6).

6. The 2018 lease includes the terms and conditions that Paragon alleges constitute violations of the grant assurances.

D. **Complainant's Position**

Paragon alleges that ADOT violated Grant Assurance 22, *Economic Nondiscrimination*, and Grant Assurance 23, *Exclusive Rights*, and the Anti-Head Tax in the 2018 Lease by imposing the following fees, conditions and requirements:

1. Requiring skydiving liability insurance that is not commercially available, or available at reasonable terms;
2. Requiring an unreasonably high level of aviation commercial general liability insurance coverage that is not based on industry standards for skydiving commercial activities;

3. Requiring Paragon to purchase "Products - Completed Operations" insurance when it does not manufacture a product nor provide commercial maintenance of products;
4. Inserting untrue recitals in the lease stating that the parties negotiated and agreed to fees when the fees and amounts of fees were dictated and imposed by ADOT;
5. Inserting lease language prohibiting Paragon from relying on lease terms to assert a Grant Assurance violation;
6. Restricting Paragon's commercial skydiving operations to only tandem skydives;
7. Imposing a ten percent (10%) gross receipts fee on Paragon's retail sales when similarly situated operators are charged 1.5 percent (1.5%) of their respective gross receipts;
8. Imposing aircraft parking fees on Paragon's operation when no other commercial operator is charged an aircraft parking fee;
9. Imposing a per-flight fee for the use of the gate to access the Airport Operation Area when similarly situated commercial operators are not charged a gate fee;
10. Requiring compliance with Letters of Agreement to which ADOT is not a party;
11. Refusing to lease Paragon additional space in the Airport Terminal, and elsewhere, when the space is unoccupied;
12. Requiring a year-end financial report by Paragon and giving ADOT the authority to make any change to fees owed by Paragon to ADOT;
13. Requiring Paragon to report the hiring of a new employee to ADOT within two hours;
14. Imposing a fuel truck parking fee on Paragon's operation when no other commercial operator is charged a fuel truck parking fee;
15. Imposing arbitrary and capricious vehicle parking fees; and
16. Violating the Anti-Head Tax Act (AHTA), 49 U.S.C. § 40116.

(FAA Exhibit 1, Item 1, pp. 27-55).

E. **The Respondent's Position**

In its Motion to Dismiss, ADOT argues that Paragon has not asserted any claims that warrant an investigation or further action by the FAA. ADOT argues Paragon already agreed to the terms at issue and relies upon several lease extensions between the parties dating from December 23, 2016, until January 31, 2018 when the parties executed a new lease (2018 Lease). The lease extends Paragon's term until January 31, 2021 (FAA Exhibit 1, Item 6, pp. 5-6).

ADOT primarily argues that Paragon improperly uses Part 16 to attempt avoiding its contractual obligations under the lease, stating "ADOT and GCNPA did not force Complainants to sign the 2018 lease." (FAA Exhibit 1, Item 6, p. 4). ADOT contends that:

> Part 16 investigatory proceedings are not meant to provide a forum for individual airport tenants to maneuver around their own contractual undertakings with an airport sponsor.... Here, Complainants seek to do what the FAA has previously said it was not an intended use of the Grant Assurances and FAA's compliance process – challenging a validly

negotiated and executed lease between two sophisticated parties (FAA Exhibit 1, Item 6, p. 9).

The parties were requested to submit status reports during the course of this proceeding. ADOT submitted separate status reports on July 23, 2020 and May 26, 2021 (FAA Exhibit 1, Item 10 and FAA Exhibit 1, Item 18). In its July 23, 2020 report, ADOT indicated that Paragon's allegation concerning the requirement with the year-end financial report was resolved. In its May 26, 2021 report, ADOT stated that other allegations have been resolved, including the commercial general liability insurance requirement, lease of additional space, and reporting of new employees. ADOT moves the Director to dismiss each allegation for failure to state a claim that warrants further investigation (FAA Exhibit 1, Item 6, p. 14).

IV. ISSUES

The Director finds that the Complaint raises the following three issues:

Issue 1 – Whether the State of Arizona violated Grant Assurance 23, *Exclusive Rights*, by offering similarly situated tenants on the Airport more favorable rights and privileges than those offered to Paragon.

Issue 2 – Whether the State of Arizona violated Grant Assurance 22, *Economic Nondiscrimination*, by imposing unjustly discriminatory lease terms on Paragon.

Issue 3 – Whether the State of Arizona violated the Anti-Head Tax Act by requiring payment of five percent of Paragon's gross receipts of skydiving sales to the State.

V. APPLICABLE FEDERAL LAW AND POLICY

A. Airport Sponsor Grant Assurances

As a condition precedent to providing airport development assistance under the AIP, the FAA must receive certain assurances from the airport sponsor. Title 49 U.S.C. § 47107(a) sets forth certain sponsorship requirements to which an airport sponsor receiving Federal financial assistance must agree. The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances. See the Index of Administrative Record for a list of all the FAA grant assurances (FAA Exhibit 1, Item 19).

B. FAA Enforcement Responsibilities

The Federal Aviation Act of 1958, as amended, 49 U.S.C. § 40101, assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. Commitments assumed by airport owners or sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation, and maintenance, as well as ensuring the public reasonable access to the airport. Pursuant to 49 U.S.C. § 47122, the FAA is authorized to take actions necessary to assure that airport owners comply with their Federal grant assurances.

C. **The Complaint and Investigative Process**

Pursuant to 14 CFR § 16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The complainant should provide a concise but complete statement of the facts relied upon to substantiate each allegation and describe how the complainant was directly and substantially affected by the things done or omitted by the respondents. The regulations governing Part 16 proceedings provide that, if the parties' pleadings supply "a reasonable basis for further investigation," the FAA should investigate "the subject matter of the complaint." 14 CFR § 16.29(a).

In accordance with 14 CFR § 16.33(b) and (e), "a party adversely affected by the Director's Determination may file an appeal with the Associate Administrator for Airports within 30 days after the date of service of the initial determination." If no appeal is filed within the time period specified in paragraph (b) of this section, the Director's Determination becomes the final decision and order of the FAA without further action.

VI. ANALYSIS

The pleadings in this matter are voluminous. More than 1100 pages have been submitted for the Director's review. In order to complete the review of the arguments, the Director will not provide an analysis of events that preceded the 2018 lease between Paragon Skydiving and the State of Arizona for access to the Airport.

A. **Preliminary Matters**

Before addressing the three issues in this case, we address four preliminary issues.

1. **Sanctions for Financial Relief and Award of Fees**

Paragon seeks an award of financial sanctions against ADOT for its violations of the AHTA. Paragon claims that the several ADOT fees assessed against it were excessive. Paragon requests reimbursement of the excessive fees and return of its $5000 lease deposit (FAA Exhibit 1, Item 1). Paragon also requests the return of all gross receipts fees paid to the State (FAA Exhibit 1, Item 1, p. 58).

ADOT requests, if it prevails, an award of its reasonable attorneys' fees and costs, costs of investigation, and all related expenses under the terms of the 2018 lease and Arizona Revised Statutes §§ 12-341 and 12-341.01, *et seq.* (FAA Exhibit 1, Item 6, pp. 38-39).

The FAA Airport Compliance Program is intended to ensure that airport sponsors comply with their federal obligations under grant assurances. The Program does not provide for restitution or an award of financial damages to complainants. FAA previously has stated, "The FAA will not attempt to negotiate a remedy to a dispute between airport tenants and the airport sponsor." The FAA does not mediate disputes through the Part 16 complaint process. Part 16 is an adjudicatory process that results in an FAA decision on the merits." (*See Platinum Aviation and Platinum Jet Center BMI* v. *Bloomington-Normal Airport Authority,* FAA Docket No. 16-06-09, Final Decision and Order, (November 28, 2007), p. 43). Further, the FAA does not enforce contract

terms between airports and tenants. Instead, the Part 16 process determines whether sponsors are currently in compliance with Federal obligations.

The FAA does enforce the agreements it enters into with airport sponsors (*See AmAv* v. *Maryland Aviation Administration*, FAA Docket No. 16-05-12, Director's Determination, (March 20, 2006)). In doing so, the FAA seeks to assure an airport sponsor's compliance with its grant obligations and does not take punitive action for past behavior except in limited circumstances, such as unlawful diversion of airport revenue (*See Vortex Aviation Services, LLC* v. *Jackson Hole Airport Board*, FAA Docket No. 16-00-18, Director's Determination, (June 21, 2001)). In this case, Paragon requests for reimbursement of the excessive fees and its $5000 deposit and ADOT's request for its attorney fees are improper attempts to use Part 16 to enforce lease terms to provide restitution or financial damages (FAA Exhibit 1, Item 1). The Director does not have the authority to award restitution, damages or attorney fees. Consequently, the Director will not further address Paragon and ADOT's request for sanctions, financial relief, or fees and dismisses those claims.

2. **Grant Assurance 24, *Fee and Rental Structure***

ADOT also argues that the fees and charges at issue are justified to make the Airport as self-sustaining as possible, as required under Grant Assurance 24, *Fee and Rental Structure*. In response to Paragon's claims for restitution, ADOT states:

> Although conspicuously absent in Complainants' Complaint, especially considering the allegations made, no analysis of Grants 22 and 23 is complete without a review of Grant Assurance 24. Grant Assurance 24 is entitled "Fee and Rental Structure." Grant Assurance 24 requires an airport sponsor to establish a fee and rate structure "which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport...." (FAA Exhibit 1, Item 6, p. 12).

ADOT also states, "[D]despite Complainants' conspicuous failure to consider Grant Assurance 24, [and] the mandates of Grant Assurance 24 color this entire dispute." (FAA Exhibit 1, Item 6, p. 13).

Paragon responds that it is not alleging a violation of Grant Assurance 24 or that it objects to "paying rates and fees that are applied in a reasonable, nondiscriminatory manner and it fully supports the need for the Airport to be financially viable - Paragon wouldn't be in business without the Airport." (FAA Exhibit 1, Item 7, pp. 12-13).

Grant Assurance 24, *Fee and Rental Structure*, states, in part, that the airport sponsor:

> will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection.

Although ADOT's arguments regarding its fees have some merit as to financial self-sustainability, Paragon alleges that the fees violated Grant Assurances 22 and 23 and not Grant

Assurance 24. Paragon questions whether ADOT is applying the fees in a reasonable and consistent manner with respect to all commercial aeronautical activities. Consequently, the issue is not about financial self-sufficiency but rather concerns whether ADOT has unreasonably applied fees to Paragon compared to other similarly situated aeronautical users at the Airport. Therefore, the Director will review whether Paragon's lease fees and terms comply with Grant Assurance 22, *Economic Nondiscrimination*, and Grant Assurance 23, *Exclusive Rights*.

3. **Motion for Summary Judgment**

ADOT filed a Motion for Summary Judgment seeking dismissal of the Complaint. ADOT argues Paragon is improperly using Part 16 to abrogate certain terms of the lease; the grant assurances are not applicable, no claim warrants an investigation or further action; and that there is no violation of the Anti-Head Tax (FAA Exhibit 1, Item 6).

In response, Paragon seeks a determination that ADOT is in violation of Grant Assurances 22 and 23 and the Anti-Head Tax Act and seeks an order to eliminate:

> most fees assessed in the lease; eliminate any requirement in the current or future lease agreements to purchase and have in place skydiving liability insurance of the sort described in the current lease; eliminate any restrictions on the type of skydiving Paragon may conduct; lease additional space to Paragon; and, return a $5000 deposit required under the original lease. (FAA Exhibit 1, Item 1, pp. 56-58).

The Director rejects ADOT's assertion that all of Paragon's claims are barred by the parties' negotiation and execution of the 2018 Lease. Although Paragon signed a lease in 2016 with several extensions, and then the 2018 lease with two one-year extensions, the Complaint centers around Paragon's objections to certain terms conditions which it claims constitute violations of the grant assurances.

The Director has routinely found in favor of the airport sponsor in complaints where an aeronautical tenant has negotiated a rental agreement that requires a particular payment and rate schedule, commences doing business and earning profits, and then complains that the deal was unfair. Under this type of scenario, the Director has rejected buyer's remorse as a rationale or justification to support an argument that terms previously negotiated and accepted should be now altered. Absent evidence showing that the Complainant objected to the terms of the lease or was denied access to pertinent information during negotiations, the Director concludes that there can be no unjust discrimination. (*See Adventure Aviation* v. *City of Las Cruces, New Mexico*, FAA Docket No. 16-01-14, Director's Determination, (August 7, 2002); *41 North 73 West, Inc. dba Avitat Westchester* v. *Westchester County, New York*, FAA Docket No. 16-07-13, Director's Determination, (June 12, 2008); *Sterling Aviation, LLC* v. *Milwaukee County, Wisconsin*, FAA Docket No. 16-09-03, Director's Determination, (April 13, 2010)).

The Record here shows there were extensive and long-term exchanges between the parties over key differences regarding the lease terms and conditions imposed by ADOT upon Paragon (FAA Exhibit 1, Item 1, Exhibit 28; FAA Exhibit 1, Item 1, Exhibit 38). Paragon's objections to the requirements, fees and charges at issue here were not resolved by those negotiations. Rather, ADOT stated that Paragon's tenancy at the airport would end if it did not sign the lease by a

certain date (FAA Exhibit 1, Item 1, Exhibit 31; FAA Exhibit 1, Item 1, Exhibit 39). Paragon would have been denied all access to the airport, unless it acquiesced and signed the lease. Paragon's ability to access the airport was thus dictated by ADOT.

The Record further shows Paragon previously filed an informal complaint against ADOT raising some of the same issues. That complaint was filed with the FAA Western-Pacific Region Phoenix Airports District Office (FAA ADO) on March 1, 2018 (FAA Exhibit 1, Item 1, Exhibit 45). The FAA ADO conducted a 14 CFR Part 13 Informal Investigation and on October 10, 2018 informed ADOT that it may be in noncompliance with Grant Assurance 22 because the FAA could not find available skydiving insurance that met ADOT's requirements. The FAA ADO further informed ADOT that its failure to take corrective action to address the unreasonable requirement may result in Part 16 Formal Investigation (FAA Exhibit 1, Item 1, Exhibit 47).

The Director notes that dispute between the Paragon and ADOT has been ongoing since 2013 and through two leases and several extensions. Paragon repeatedly objected to the same or similar terms in prior correspondence. While Paragon signed lease extensions, it is appropriate for the FAA to examine the terms of the leases and determine if they violate the grant assurances – even where the parties appear to have agreed to the terms. In this case, the FAA is justified in reviewing the leases because there is evidence that Paragon was forced to sign the lease as condition for access and the airport was already on notice, via the Part 13 complaint, that the terms may violate the assurances. And for these reasons, the Director denies the Motion for Summary Judgment.

4. **Other Motions**

All other motions not specifically addressed in this Director's Determination are denied.

B. <u>Discussion</u>

As stated above, this case presents three issues:

1. Whether the State of Arizona violated Grant Assurance 23, *Exclusive Rights*, by offering similarly situated tenants on the Airport more favorable rights and privileges than those offered to Paragon.
2. Whether the State of Arizona violated Grant Assurance 22, *Economic Nondiscrimination*, by imposing unjustly discriminatory lease terms on Paragon.
3. Whether the State of Arizona violated the Anti-Head Tax Act by requiring payment of five percent of Paragon's gross receipts of skydiving sales to the State.

Issue 1 – Whether the State of Arizona violated Grant Assurance 23, *Exclusive Rights*, by offering similarly situated tenants on the Airport favorable lease rights and privileges than those offered to Paragon.

Paragon alleges ADOT violated Grant Assurance 23, *Exclusive Rights* by offering other Airport

tenants more favorable lease terms than those offered to Paragon. The specific terms at issue are described below in Issue 2. Grant Assurance 23 states in part that, "It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public." However, in this case, Paragon is still operating on the Airport providing skydiving services and has been since 2016. Paragon's current lease allows continued operation for additional years through one-year lease extensions. Since Paragon still has access at the Airport, the Director is unpersuaded there is any exclusive right violation based on Paragon's claims. (*See Atlantic Beechcraft Services, Inc. and Southeast Turbine, Corp.* v. *City of Fort Lauderdale, FL*, FAA Docket No. 16-17-03, Director's Determination, (February 7, 2018), p. 15).

Therefore, the Director will not provide a detailed analysis of the alleged violations of Grant Assurance 23, *Exclusive Rights*. The Director finds no violation with Grant Assurance 23, *Exclusive Rights.*

Issue 2 – Whether the State of Arizona violated Grant Assurance 22, *Economic Nondiscrimination*, by imposing unjustly discriminatory lease terms on Paragon.

In Issue 2, Paragon argues that 15 terms of its lease imposed by ADOT violates Grant Assurance 22 by being unjustly discriminatory. ADOT responds that Paragon is improperly using Part 16 to "maneuver around their own contractual undertakings with an airport sponsor .... Here, Complainants seek to do what the FAA has previously said is not an intended use of the Grant Assurances and FAA's compliance process – challenge a validly negotiated and executed lease between two sophisticated parties." (FAA Exhibit 1, Item 6, p. 9).

Paragon replies that "Respondent cannot hide behind the fact that it entered into a lease with Paragon – even if Paragon had full opportunity to negotiate its terms and not been forced to sign or go out of business and claim that because Respondent used a lease to set the terms of Airport access, Respondent can ignore the Grant Assurances it agreed to and signed." (FAA Exhibit 1, Item 1 p. 10).

The Director addresses each of Paragon's fifteen specific allegations that ADOT is violating Grant Assurance 22, below:

Allegation 1. Whether requiring skydiving liability insurance that is not commercially available, or available at reasonable terms, violates Grant Assurance 22.

In its Complaint, Paragon claims that ADOT requires "Paragon obtain an insurance policy that provided $1 million in liability coverage for skydiving, specifically: Policy shall include coverage for bodily injury, property damage, and liability arising out of the freefall of a skydiver or jumper" (FAA Exhibit 1, Item 1, Exhibit 40). The lease required that the policy be "Occurrence Form," and provide $1 million coverage for each occurrence and $2 million general aggregate coverage (FAA Exhibit 1, Item 1, pp. 27-28). Paragon claims that this skydiving insurance is unreasonable because the ADOT-provided broker, Prime Insurance Company,

quoted extremely expensive premiums (FAA Exhibit 1, Item 1, pp. 27-28; FAA Exhibit 1, Item 7).

In addition, Paragon explains that it requires the tandem customer to initial and sign the UNINSURED UNITED PARACHUTE TECHNOLOGIES, LLC TANDEM PARACHUTE JUMPER AGREEMENT. This is a release and exemption of liability required by Paragon before customers can tandem skydive. Paragon states the release and exemption of liability also includes protection for the airport owner and operator (FAA Exhibit 1, Item 1, Exhibit 4; FAA Exhibit 1, Item 7, pp. 19-20).

Paragon previously filed a Part 13 Informal Complaint on the skydiving insurance issue. The FAA ADO investigated and found against ADOT for requiring Paragon to obtain skydiving insurance. The FAA ADO investigation surveyed three insurance carriers and found that it could not find a skydiving insurance policy that was in effect or reasonable at the time for this type of insurance. As a result, FAA determined that ADOT may be in violation of Grant Assurance 22 on October 10, 2018 (FAA Exhibit 1, Item 1, Exhibit 47).

In its Motion for Summary Judgment, ADOT states that Paragon negotiated and accepted the Skydiving Liability Insurance when it agreed to the 2018 lease. ADOT also submitted evidence that skydiving liability coverage was available at Prime Insurance Company (FAA Exhibit 1, Item 6, pp. 14-15). ADOT argues that Paragon knew of and accepted the insurance requirement before it executed the 2018 lease. ADOT finally contends that this insurance protects the State of Arizona since there is no statutory protection or constitutional limits on the State of Arizona's liability for any skydiving accidents (FAA Exhibit 1, Item 6, pp. 16-17).

Paragon responds that "a policy ostensibly offered by a single underwriter in the country that would cost Paragon a minimum of $45,000..." (FAA Exhibit 1, FAA Item 1, p. 14; FAA Exhibit 1, Item 1, Exhibit 34, p. 3). Paragon also claims that ADOT did not provide Paragon with any background information on the skydiving insurance requirements (FAA Exhibit 1, Item 7, pp. 16-17).

Grant Assurance 22(a) provides that an airport sponsor:

> will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport (FAA Exhibit 1, Item 19).

The FAA has previously addressed an airport sponsor's requirements concerning the amount and kind of skydiving insurance for commercial operators seeking to use the airport. The FAA has determined that the sponsor may not impose unreasonable insurance skydiving requirements on commercial operations seeking to provide skydiving at the airport. (*See Jeff Bodin and Garlic City Skydiving* v. *City of Santa Clara, California*, FAA Docket No. 16-11-06, Final Agency Decision (August 12, 2013); *Skydive Sacramento* v. *City of Lincoln, California*, FAA Docket No. 16-09-09, Director's Determination, (May 4, 2011)).

The Record shows that the FAA ADO could not find a skydiving insurance policy that was in effect or reasonable at the time for this type of insurance. As a result, FAA ADO determined that ADOT may be in violation of Grant Assurance 22 on October 10, 2018 (FAA Exhibit 1, Item 1, Exhibit 47).

Here, ADOT identified one insurance company that met its skydiving insurance requirements. However, Paragon provided an affidavit from an experienced aviation insurance company owner who reviewed the proposed skydiving insurance policy who stated that the proposed insurance policy is a premises policy and not a skydiving liability policy because of the exclusions (FAA Exhibit 1, Item 7, Exhibit 65, pp. 4 and 18). Paragon has provided sufficient evidence to show that no reasonable skydiving liability insurance is available. Therefore requiring Paragon to obtain such insurance is an unreasonable term under grant assurance 22.

Therefore, the Director finds that the ADOT's requirement for skydiving liability insurance violates Grant Assurance 22.

Allegation 2. Whether requiring a high level of aviation commercial general liability insurance coverage violates Grant Assurance 22.

Paragon next complains that ADOT improperly "sets the level of coverage of Aviation General Liability insurance (CGL) required to be purchased at $5 million CGL in place under the Lease between Complainants and the State." Paragon argues the CGL limits should be set at a $1 million policy limit with a $2 million annual aggregate. (FAA Exhibit 1, Item 1, p. 57).

In the 2018 lease, Paragon agreed to "procure and maintain for the duration of the lease, insurance against claims for injury or damage to property that may arise from or in connection with this lease." (FAA Exhibit 1, Item 6, Exhibit 1, Exhibit 1, p. 23). Paragon states, "When Paragon was presented with the original lease by ADOT, it was required to purchase a CGL (commercial general liability) policy with $5 million coverage. Complainants immediately sought to purchase a $5 million GCL policy. In doing so, they discovered it was practically impossible because of the small size of their business (FAA Exhibit 1, Item 1, Exhibit 43, p. 2). Their insurance broker was eventually able to obtain coverage from one insurer at a very high annual premium. (FAA Exhibit 1, Item 1, p. 31).

Paragon also states:

> The current lease has the same $5 million CGL requirement (Exhibit 40). In early 2018, when it came time to renew its CGL policy, Paragon was informed by its insurance broker that the insurer was no longer writing such high coverage limits for small businesses such as Paragon and the highest coverage level the broker could obtain was $2 million. Paragon immediately purchased the $2 million insurance and advised ADOT of the situation, pointing out that it bought the highest level of coverage it could obtain (FAA Exhibit 1, Item 1, p. 31; FAA Exhibit 1, Item 1, Exhibit 44).

The Record reflects that ADOT appears to be agreeable to change the Commercial General Liability insurance coverage to the amount of $1M per occurrence/$2M aggregate from Paragon

(FAA Exhibit 1, Item 9, pp. 17-18). In this case, the Record also shows that the CGL insurance required by ADOT is reasonably obtainable because Paragon has acquired it. "It is consistent with the Sponsor's grant assurances for the sponsor to protect itself against exposure to the liability associated with public use of airport property. The Sponsor may protect its ability to remain a going concern, while continuing to make itself available on a fair, reasonable and not unjustly discriminatory basis, by establishing general liability insurance requirements for users of the airport ...." (*Ashton* v. *City of Concord, N.C.*, FAA Docket No. 16-99-09, Director's Determination, (January 28, 2000), pp. 24-25). Since Paragon is able to obtain the $1M commercial general liability insurance, this insurance requirement is reasonable.

The Director directs ADOT to provide supporting documentation that it has reduced the amount of commercial general liability requirement to the $2 million annual aggregate.

Allegation 3. Whether requiring the "Products-Completed Operations" insurance violates Grant Assurance 22.

Paragon alleges that it was required to purchase and keep in force and effect "Products - Completed Operations" insurance with an aggregate coverage of $5 million (FAA Exhibit 1, Item 1, pp. 34-35). It claims that ADOT has not provided any reason Paragon must carry this type of insurance and the insurance it is not applicable to Paragon's activities. Paragon argues that "requiring a commercial aeronautical operator to purchase insurance to cover an activity in which it does not participate is unreasonable." (FAA Exhibit 1, FAA Item 1, p. 35).

ADOT responds that it is reasonable and non-discriminatory for Paragon to maintain the $5 million Products Completed insurance in the event an improperly maintained or packed parachute is determined to be the cause of an accident or incident. ADOT argues that "it is consistent that the FAA Order 5190.6B, Chapter 9.5(d) allows for airport sponsors to establish different rates and fee requirements for different users when those users create a unique "venture risk." (FAA Exhibit 1, Item 6, p. 19).

ADOT further argues that the Products and Completed Operations endorsement states:

> the Products and Completed Operations endorsement provides coverage in the case that a tenant abandons the premises and a liability arises from a hazard or condition that remains after the tenant has "completed" its work – a liability that does not arise from ongoing operations. Without a Products and Completed Ops endorsement, there is no insurance to cover the State in the event that a tenant abandons the property. In addition, the use of aircraft or watercraft does not affect this endorsement. (FAA Exhibit 1, Item 11).

Paragon responds that "it does not rent parachutes ...." nor "do any commercial maintenance or manufacture any products, it should not be required to purchase products coverage on top of CGL insurance" (FAA Exhibit 1, Item 7, p. 23).

ADOT correctly states that an airport sponsor may impose different terms and conditions upon aeronautical users of an airport. FAA Order 5190.B, *Airport Compliance Manual*, Chapter 9, Section 9.5 (d) states in full:

> **Differences of Value and Use.** The FAA may consider factors such as minimum investment requirements, demand, location, venture risk, ownership of facilities, time remaining on contract terms, and condition of facilities as reasons that may justify differing rates. For example, a sponsor may establish two classes of FBO, one serving primarily high performance aircraft and another that caters to piston powered aircraft. Nonetheless, rates that may not be comparable should be equitable. (FAA Order 5190.6B, p. 9-6).

ADOT claims that Products and Completed Operations Insurance is applicable to skydiving because it packs its parachutes. Paragon responds that this insurance is not applicable to a commercial aeronautical activity because it excludes aircraft (FAA Exhibit 1, Item 11, Exhibit 7). ADOT subsequently responds to Paragon that this insurance is required in case a tenant abandons its lease and there are hazards or dangers that remain afterwards (FAA Exhibit 1, Item 11, Exhibit 8).

ADOT has not provided sufficient evidence or an adequate explanation why a $5 million Products and Completed Operations insurance policy is a reasonable requirement for a commercial skydiving operation. ADOT's rationale for requiring the Products and Completed Operations insurance is that the tenant, Paragon, might abandon the lease premises. However, there is no evidence or explanation why a lessee's abandonment of the premises requires the $5 million policy at issue here and none is apparent. Therefore, requiring Paragon to carry this type and amount of insurance is unreasonable.

Consequently, the Director determines that ADOT is in noncompliance with Grant Assurance 22 regarding this requirement.

> **Allegations 4, 5, and 10. Whether requiring recitals in the lease and prohibiting complainants from relying on certain terms, or requiring compliance with Letters of Agreement between Complainants and FAA Air Traffic Control violates Grant Assurance 22.**

Paragon alleges that ADOT's refusal to negotiate or remove certain recitals in the lease amounts to a violation of Grant Assurance 22, *Economic Nondiscrimination*. Paragon argues that ADOT will use the recitals to prevent Paragon from disputing any fees and evict it (FAA Exhibit 1, Item 1, p. 36). Paragon also claims that the recitals prevent it from filing a Part 16 (FAA Exhibit 1, Item 1, p. 38). Paragon also claims that its 2018 Lease with ADOT improperly includes recitals which require Paragon to comply with any Letter of Agreements entered between the FAA's Air Traffic Control Tower and ADOT (FAA Exhibit 1, Item 7, p. 34).

ADOT replies that "[R]ecitals to an agreement are not binding on the parties or considered anything more than an expression of the parties' present intent. Therefore, the Complainants'

belated disagreement with the language used in the recitals cannot rise to the level of a Grant Assurance 22 violation and is not a valid Part 16 complaint." (FAA Exhibit 1, Item 6, p. 22).

The Director previously noted "The FAA will not attempt to negotiate a remedy to a dispute between airport tenants and the airport sponsor. The FAA does not mediate disputes through the Part 16 complaint process. Part 16 is an adjudicatory process that results in an FAA decision on the merits." (*See Platinum Aviation and Platinum Jet Center BMI* v. *Bloomington-Normal Airport Authority*, FAA Docket No. 16-06-09, Final Decision and Order, (November 28, 2007), p. 43). Nor does the FAA enforce contract terms between airports and tenants. Rather, the FAA enforces the agreements it enters into with airport sponsors. (*See AmAv* v. *Maryland Aviation Administration*, FAA Docket No. 16-05-12, Director's Determination, (March 20, 2006)).

In this case, ADOT agrees that the lease recitals are not binding on the parties. The Record shows that Paragon filed a Part 13 Informal Investigation with the FAA Western Pacific Region Phoenix Airports District Office in 2018 and this Part 16 complaint. Both complaints allege violations of grant assurances. However, there is no evidence that ADOT is arguing that Paragon is breaching the foregoing lease recitals by filing the two complaints with the FAA. Furthermore, the inclusion of the Letters of Agreement in the recitals do not amount to a grant assurance violation. Thus, the Director reasonably determines that it appears Paragon is asking the Director to require ADOT to change the lease recitals of a signed or future leases. There is no evidence that ADOT has violated grant assurance 21 with respect to allegations 4, 5, and 10.

Consequently, the Director finds no merit with Paragon's allegations 4, 5, and 10.

Allegation 6. Whether restricting Paragon's commercial skydiving operations to tandem skydives is unreasonable and violates Grant Assurance 22.

Paragon claims that ADOT has unreasonably restricted Paragon's skydiving operations only to tandem operations and has prohibited solo skydives. Paragon states that while it has no desire to provide solo skydiving services, it does occasionally wish to have one of its highly experienced skydivers make a solo skydive to make videos in support of its tandem business (FAA Exhibit 1, Item 1, Exhibit 48, p. 4).

ADOT responds that "Complainants do not cite to any evidence that it requested [and was denied] the opportunity to remove the tandem skydiving limitation in the new lease and replace it with language that would allow certain solo skydiving activities." (FAA Exhibit 1, Item 6, p. 23). Furthermore, ADOT suggests that "the record indicates that ADOT has been flexible in its approach with GCNPA's [Grand Canyon National Park Airport] operations and will continue to do so as requested and as is reasonable for overall safety and risk mitigation." (FAA Exhibit 1, Item 9, p. 19).

The Record confirms that ADOT did not approve one of Paragon's solo jumpers who was going to take a video for the State of Arizona Department of Tourism. ADOT's denial was based on the Paragon's lease terms (FAA Exhibit 1, Item 1, Exhibit 1, p. 2; FAA Exhibit 1, Item 6, pp. 22-23). ADOT argues that Paragon's lease and business plan only calls for tandem skydiving, so Paragon is limited to tandem jumps. (FAA Exhibit 1, Item 6, pp. 22-23).

However, both parties provide some evidence that ADOT permitted military skydivers to jump solo at the airport. (FAA Exhibit 1, Item 1, Exhibit 1, p. 2; FAA Exhibit 1, Exhibit 6, p. 2).

With respect to aviation safety, the Record shows that both FAA safety assessments and FAA Letters of Agreements do not limit Paragon's operations only to tandem jumps (FAA Exhibit 1, Item 1, Exhibit 5 and Exhibit 6). The FAA safety assessments did not state that solo skydiving would be unsafe at the airport (FAA Exhibit 1, Item 1, Exhibit 5).

ADOT's decision to deny solo skydiving appears to be exclusively based upon Paragon's lease and business plan. ADOT's decision that the lease alone justifies limiting Paragon, a commercial aeronautical operator, solely to tandem skydives constitutes an unreasonable restriction upon aeronautical activities and is inconsistent with ADOT's obligations under Grant Assurance 22.

The Record, however, also shows that ADOT is willing to negotiate with Paragon to allow solo skydiving at the airport. Consequently, the Director directs ADOT to make the necessary changes to the current Paragon lease to remove this unreasonable restriction on skydiving at the airport.

Therefore, the Director finds that this restriction on solo skydiving jumps in the lease terms currently is inconsistent with Grant Assurance 22.

Allegation 7. Whether imposing a ten percent gross receipts fee on Complainants' retail sales when similarly situated operators are charged 1.5 percent violates Grant Assurance 22.

Paragon states that ADOT charges Paragon a fee of ten percent (10%) of its gross receipts for all retail sales after federal, state, and local taxes (FAA Exhibit 1, Item 1, p. 40). Paragon claims that ADOT should not charge Paragon higher fees than the 1.5% charged Grand Canyon Airlines (FAA Exhibit 1, Item 7, pp. 28-29).

ADOT responds that the fees are based on the operator's services of activity, and not on a lease (FAA Exhibit 1, Item 6, p. 24). The Arizona Administrative Code imposes a gross receipts tax on commercial operators at the Grand Canyon National Park Airport. The gross receipts fee for "air tour flights" is 1.5 percent (1.5%); it is five percent (5%) for vendor fuel sales; and the fee is "as negotiated" for "other" users (FAA Exhibit 1, Item 1, Exhibit 53).

As ADOT explains, the Arizona Administrative Code provides "air tour flights" are to pay the 1.5 % charge. The Arizona Aeronautical Code section R17-2-101 defines "commercial aviation" to "mean[s] the scheduled or non-scheduled transportation by air of persons or property for compensation or hire under FAA regulations." (FAA Exhibit 1, Item 1, Exhibit 53). Although not defined, ADOT has interpreted and limited the term "air tour flights" to only air tour operators and does not include any other commercial aeronautical activities. According to ADOT, the fees for other commercial aeronautical activities are to be "as negotiated." (FAA Exhibit 1, Item 1, Exhibit 53).

Grant Assurance 22(a) states:

> It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport. (FAA Exhibit 1, Item 19).

FAA Order 5190.6B, *Airport Compliance Manual*, September 30, 2009, sets forth FAA internal guidance and policies for the airport sponsor's obligations under Grant Assurance 22. Chief among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport and to make all airport facilities and services available on fair and reasonable terms without unjust discrimination. (See FAA Order 5190.6B, Secs. 4-14(a)(2) and 3-1).

Regarding lease terms, the FAA has previously determined that an airport sponsor is obliged to treat similarly situated aeronautical users of an airport uniformly and fairly with respect to the lease terms, rents, fees and other charges. For example, the Director has determined a sponsor violated Grant Assurance 22 by offering one scenic tour operator a lease with only short term compared to the 30-year lease term offered other similarly situated aeronautical users of airport, including other commercial operators. (*Skydance Helicopters, Inc. d/b/a Skydance Operations, Inc.*, v. *Sedona Oak-Creek Airport Authority and Yavapai County, Arizona*, FAA Docket No 16-02-02, Director's Determination, (March 7, 2003). And the FAA determined a sponsor unjustly discriminated against one fixed-base operator by offering it a lease with higher rental rates, higher maintenance and repair costs, and higher fuel flowage fees compared to the leases offered to another operator. (*Langa Air, Inc.*, v. *St. Louis Regional Airport Authority*, FAA Docket No.16-00-07, Final Agency Decision, (December 13, 2001)).

The Director finds that commercial skydiving is similarly situated to air tour operations for the purpose of ADOT's obligation to treat commercial skydiving uniformly under Grant Assurance 22. Commercial skydiving operations and air tour operations make similar, if not identical, use of the airport facilities. Both are commercial operations open to the public and use the same airport services. In addition, both are "commercial operators" within the scope of FAA's definition. 14 CFR § 1.1, *General Definitions*, Commercial Operator, provides as follows:

> Commercial operator means a person who, for compensation or hire, engages in the carriage by aircraft in air commerce of persons or property, other than as an air carrier or foreign air carrier or under the authority of Part 375 of this title. Where it is doubtful that an operation is for "compensation or hire", the test applied is whether the carriage by air is merely incidental to the person's other business or is, in itself, a major enterprise for profit. (FAA Exhibit 1, Item 12).

This definition also is found in other FAA documentation (FAA Exhibit 1, Item 1, Item 21 and Item 22). The FAA broader definition of a commercial operator includes skydiving as a commercial aeronautical activity as well as sightseeing operators. Both are similar commercial aeronautical activities within the scope of Grant Assurance 22.

The evidence here shows that the 10% fee imposed on Paragon is unjustly discriminatory. ADOT's Airport Manager recommended twice to ADOT executives that Paragon pay the 1.5% charge to avoid economic nondiscrimination (FAA Exhibit 1, Item 1, Exhibits 3 and 4). Furthermore, ADOT's Office of Civil Rights also investigated Paragon's lease and fees and issued its conclusions on February 15, 2017. Although the staff recognized their lack of experience on the grant assurances, they determined that ADOT personnel clearly did not comply with the State of Arizona Administrative Code, Table 1, when they applied and charged the 10% fee on Paragon. ADOT's Office of Civil rights also found Paragon should have been charged 1.5% (FAA Exhibit 1, Item 1, Exhibit 11).

This contrasts with ADOT's senior auditor who subsequently determined on October 6, 2017 that Paragon's charge percentage is "Other –as negotiated" is correct since Paragon did not meet the Arizona State Code definition of "air tour operator." (FAA Exhibit 1, Item 1, Exhibit 60). However, the senior auditor did not address whether the 10% fee charged Paragon was reasonable compared to the 1.5% charged air tour operators.

The Director finds that ADOT is unjustly discriminating against Paragon. The 10% fee imposed on Paragon greatly exceeds the 1.5% fee charged air tour operators by over 600%. The 1.5% fee air tour operator fee is fixed, while all other classes of commercial aeronautical activities must negotiate the amount of this fee. Furthermore, it is beyond the scope of this order to define exactly what comparable must be in every context, but here the Director holds that an otherwise unjustified difference of over 600% does not constitute a comparable rate. ADOT's interpretation that only "air tour flights" are entitled to the low 1.5% fees is unjust, unreasonably discriminatory and violates Grant Assurance 22.

Consequently, the Director finds merit with this allegation that ADOT is unreasonably and unjustly discriminating against Paragon in violation of Grant Assurance 22.

Allegations 8 and 9. Whether imposing aircraft parking fees or gate access fees violates Grant Assurances 22 and 23.

In Allegation 8, Paragon claims that ADOT is unjustly discriminating because Paragon is required to pay aircraft parking fees when another aeronautical user, Westwind Aviation, Inc. (Westwind), does not pay parking fees (FAA Exhibit 1, Item 7, p. 31). Westwind and Paragon both have terminal space leases, and neither has a ground lease with hangar (FAA Exhibit 1, Item 1, p. 44). Paragon claims that they are similarly situated commercial operators on the Airport. Paragon also alleges that Grand Canyon Airlines pays no parking fees on the Airport ramp outside of its leased space (FAA Exhibit 1, Item 1, p. 44).

ADOT responds that Westwind does not usually overnight park its aircraft. According to ADOT, when Westwind does overnight park aircraft at the Airport, ADOT charges the posted daily fee for overnight parking (FAA Exhibit 1, Item 6, p. 26).

The Record shows some evidence that Westwind ties down its aircraft on the ramp, which is an industry practice for high wing aircraft that park overnight on a ramp (FAA Exhibit 1, Item 7, Exhibit 64, Item F). ADOT also had internal discussions and determined the commercial use

ramp fee exemption was reasonable for Westwind as an air tour operator but not for Paragon (FAA Exhibit 1, Item 7, Exhibit 64, Item G).

Regardless, the Airport's financial records do not show that Westwind paid any overnight parking payments. Although Paragon has not met its burden to show a violation, the Director is requesting ADOT to provide further information and substantiate or explain how these payments were made. (FAA Exhibit 1, Item 7, Exhibit 62, and Exhibit 63).

In Allegation 9, Paragon claims that ADOT charges it a gate fee per customer to pass through the gate to the ramp (FAA Exhibit 1, Item 1, p. 45). Paragon also alleges that Grand Canyon Airlines does not pay any gate fees when its customers load into its aircraft on the airport terminal ramp, like Westwind and Paragon (FAA Exhibit 1, Item 7, pp. 32-33).

ADOT claims that its' lease with Westwind imposes the same gate fee and Westwind pays the gate fees each month (FAA Exhibit 1, Item 6, p. 27). ADOT also claims that it appropriately applied the Arizona Administrative Code fees to Paragon (FAA Exhibit 1, Item 9, p. 25).

Again, Westwind and Paragon both have terminal space leases, and neither has a ground lease with hangar (FAA Exhibit 1, Item 1, p. 44). They are similarly situated commercial operators at the Airport. The Airport's financial records show that Westwind does pay gate fees (FAA Exhibit 1, Item 7, Exhibit 62, and Exhibit 63).

The Airport's financial records, however, do not show that Grand Canyon Airlines pays gate fees when its customers board through the airport terminal gate (FAA Exhibit 1, Item 7, Exhibit 62, and Exhibit 63). ADOT argues that Grand Canyon Airlines is operating under an old and expiring lease (FAA Exhibit 1, Item 6, Exhibit 1, p. 2). However, ADOT does not provide any documentation of whether Grand Canyon Airlines or the selected new lessee is paying ADOT's gate fees.

Grant Assurance 22(a) states:

> It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport (FAA Exhibit 1, Item 19).

ADOT's financial accounts have different receivable codes for each tenant and it is unclear what those payments reflect. Furthermore, ADOT's financial records were printed on April 23, 2020 and may not be current. (FAA Exhibit 1, Item 7, Exhibits 62 and 63). The Director is concerned that these documents may not give a complete and current financial record of payments. Consequently, Paragon did not meet the burden of proof to show a violation. However the Director requests ADOT to submit financial documentation to substantiate its written responses in allegations 8 and 9 that (1) Westwind pays the aircraft parking fees, and (2) Grand Canyon Airlines, or ADOT's new airline, pays gates fees.

Allegation 11. Enter into good faith negotiations with Complainants to lease additional space on the Airport.

Paragon alleges that it made a request to ADOT to lease additional space at the Airport, including terminal space; an unused building that it desired to refurbish; and a leasehold where it desired to construct a building (FAA Exhibit 1, Item 1, p. 47). Paragon also alleges it requested to rent a vacant house at the Airport and points out that other Airport houses were rented to other commercial aeronautical operators in 2019. In both cases, ADOT refused to enter into the lease after the draft lease was signed and submitted (FAA Exhibit 1, Item 7, Exhibit 64, Item H).

ADOT denies these allegation and argues that Paragon did not request additional space during the 2018 lease negotiations. However, ADOT indicates that Paragon is encouraged to submit a request to lease terminal space in writing to ADOT to begin the process of negotiations. ADOT admits that Paragon was interested in an unused hangar but explains that that facility is subject to a state Request for Proposal (RFP), which Paragon may not be awarded if it is not the winning proposal (FAA Exhibit 1, Item 6, pp. 28-29). ADOT's status report also provides that this issue is resolved since Paragon is leasing space in the terminal, such as a cafe (FAA Exhibit 1, Item 18).

FAA requirements do not obligate the airport sponsor to provide specific hangars or hangar types. Nonetheless, the airport sponsor does have an obligation to make available suitable areas or space available on reasonable terms to those who are willing and otherwise qualified to offer flight services to the public or support services to aircraft operators. (*See Thermco Aviation, Inc., and A-26 Company* v. *City of Los Angeles, Los Angeles Board of Airport Commissioners, and Los Angeles World Airports*, FAA Docket No. 16-06-07, Director's Determination, (June 21, 2007)).

ADOT did not explain its lack of responsiveness to Paragon's prior requests for additional leasing opportunities. Furthermore, ADOT did not provide any evidence to support that this allegation was resolved. ADOT's unwillingness to work with Paragon, a qualified commercial aeronautical operator seeking additional leased Airport property, is inconsistent with Grant Assurance 22, *Economic Nondiscrimination*. Nevertheless, ADOT now offers to help provide a process to Paragon to request additional terminal or other available space on the Airport.

Consequently, the Director will dismiss this claim provided ADOT provides documentation that it is providing opportunities for Paragon to lease available airport property consistent with other similarly situated commercial aeronautical operators under Grant Assurance 22.

Allegation 12. Eliminate the requirement that Complainant provide financial data and materials.

Paragon withdrew this allegation of its Complaint except to the extent it involves a violation of the Anti-Head Tax Act (FAA Exhibit 1, Item 7, p. 36).

Therefore, the Director dismisses this allegation except for the claim that it violates the Anti-Head Tax Act, which the Director addresses in Allegation 15.

Allegation 13. Eliminate the requirement from the Lease that Complainants report the hiring of a new employee to the State within two hours.

Paragon alleges that it is the only Airport tenant required to report the hiring of a new employee within two hours (FAA Exhibit 1, Item 1, p. 49). Paragon provided its Lease as evidence (FAA Exhibit 1, Item 1, Exhibit 40). The lease has the two hour new employee reporting requirement.

ADOT responds that all tenants had the two-hour requirement to report new employees to ADOT when Transportation Security Administration (TSA) operated at the Airport. ADOT states that since TSA no longer operates at the Airport, this is an unnecessary TSA requirement that is no longer required. ADOT further states that it is implementing a new policy that would expand the employee reporting time from two hours to two days (FAA Exhibit 1, Item 6, pp. 30-31). As part of ADOT's documentation to support its response, ADOT includes the different tenant leases. It also provides an affidavit signed by the airport manager on April 20, 2020 (FAA Exhibit 1, Item 6, Exhibit 1). Finally, ADOT's status report provides that this requirement was changed from two hours to two days, and the allegation should be dismissed (FAA Exhibit 1, Item 18).

These leases were reviewed. The Record shows that at least four commercial aeronautical operator leases, including Paragon, require that new employees be reported to ADOT within two hours (FAA Exhibit 1, Item 6, Exhibit 1, Exhibits 2, 3, 4, and 6, p. 16). However, at least two other leases (held by Grand Canyon Rentals Adventures, LLC (Rentals) and Westwind) required the reporting of new employees to ADOT within thirty days. Rentals signed its lease on March 21, 2020, and Westwind signed its lease on August 30, 2018 (FAA Exhibit 1, Item 6, Exhibit 1, Exhibit 1 and Exhibit 5).

Grant Assurance 22(a) states:

> It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport. (FAA Exhibit 1, Item 19).

The Record shows that ADOT submitted an affidavit dated April 20, 2020 that states all tenants are currently required to report new employees within two days. The Record, however, shows ADOT allows two tenants, Westwind and Rentals, to report new employees within thirty days rather than the two days afforded other tenants. ADOT also provides that it is changing the requirement from two hours to two days for new employee reporting. There are unexplained discrepancies regarding the reporting requirements and questions whether ADOT requires all tenants to meet the same uniform reporting requirement. Furthermore, ADOT did not provide any evidence to support its 2021 status report that this allegation has been resolved.

However, the Director will dismiss this claim when ADOT submits its supporting documentation to the FAA that the security reporting requirement is, or will be, consistent between all of the aeronautical tenants.

Allegations 14 and 15. Eliminate the fuel truck and vehicle parking fees from the current and future lease with Paragon that are not imposed on all other commercial operators on the Airport.

Paragon argues that it is charged a parking fee of $100 per month for its fuel truck (as with other operators, Paragon self-fuels its aircraft) in Allegation 14. Paragon also alleges that Westwind does not pay any parking fees for its fuel truck (FAA Exhibit 1, Item 1, p. 50). Paragon provides a photograph that alleges there are Grand Canyon Airlines fuel trucks parked outside of Grand Canyon's Airlines' leased spaces (FAA Exhibit 1, Item 7, Exhibit 64, Item E).

ADOT responds and claims that "Westwind, however, does not have a fuel truck, unlike Complainants." (FAA Exhibit 1, Item 6, p. 32) ADOT argues that should Westwind park a vehicle at the Airport, it would also be subject to the assessment of fees. ADOT further argues that the other tenant helicopter air tour companies operate under a ground lease with a fuel hydrant, unlike Paragon and Grand Canyon Airlines (FAA Exhibit 1, Item 6, p. 32). The Director notes that there are differences between mobile fuel trucks and fixed fuel hydrants. The Director also notes that the submitted photograph does not provide any context to Paragon's allegation. Consequently, Paragon has not met its burden of proof for this allegation.

In Allegation 15, Paragon claims that Rentals, a nonaeronautical tenant, rents All Terrain Vehicles (ATVs) and is leasing space in the terminal and airport parking lot. The Record reflects that Rentals leases the entire rental car lot for its operation (FAA Exhibit 1, Item 6, Exhibit 1, p. 5). The vehicles are parked in an area leased to Rentals for $3,600 per year or $300 per month, or approximately $9.10 per ATV per month (FAA Exhibit 1, Item 7, p. 37). The Record shows the lease allows Rentals to use the parking lot for vehicular parking regardless of the number or types of vehicles and business needs. Consequently, this lease is substantively different than Paragon's lease for one parking space for one business vehicle. Therefore, Rentals and Paragon are not similarly situated tenants for vehicular parking at the airports.

Part 16 requires "the burden of proof is on the complainant to show noncompliance with an Act or any regulation, order, agreement or document of conveyance issued under the authority of an Act" (14 CFR § 16.23(k)(1)). Paragon has provided the Director insufficient substantive detailed evidence supporting its allegation that ADOT is unreasonably discriminating against it through fuel truck or vehicle parking fees.

Consequently, the Director dismisses both Allegations 14 and 15.

Issue 3 – Whether the State of Arizona violated the Anti-Head Tax Act by requiring payment of five percent of Paragon's gross receipts of skydiving sales to the State.

Paragon alleges that the lease unlawfully requires Paragon to pay five percent of gross receipts of sales to ADOT. Paragon claims that the five percent provision violates of 49 U.S.C. § 40116 as a tax or fee on gross receipts on a commercial skydiving operation (FAA Exhibit 1, Item 1, p. 51).

ADOT responds that "Arizona law specifically allows ADOT to lease land under its control for airport or air terminal purposes (A.R.S. § 28-8425), and further vests ADOT's director with authority to establish fees for the use of state-owned airports and appurtenant facilities (A.R.S. § 28-8204)." (FAA Exhibit 1, Item 6, p. 33).

ADOT also argues that the fee is a flat, annual fee (paid monthly) and is not levied based on the number of customers. ADOT contends that the fee is meant to be based on a calculated approximation of Complainants' facility usage where gross receipts are used as guidance to determine that amount (FAA Exhibit 1, Item 6, pp. 37-38).

The Anti-Head Tax Act is codified at 49 U.S.C. § 40116 and provides in part, "...prohibits a State, political subdivision, or an authority acting for a State or political subdivision from collecting a new tax, fee, or charge which is imposed exclusively upon any business located at a commercial service airport or operating as a permittee of the airport, other than a tax, fee, or charge utilized for airport or aeronautical purposes." 49 U.S.C. § 40116 (d)(2)(A)(v)).

In this matter, the State of Arizona Department of Transportation (ADOT) is the airport sponsor and is collecting the user fees from Paragon for utilizing the Airport. The revenue collected appears to be used for the airport purposes. Based on the descriptions of the fees provided by ADOT, the Director finds that Paragon has not provided sufficient evidence to demonstrate a violation of the AHTA. There also is no evidence to suggest that the gross receipt fees are allocated to other State of Arizona governmental accounts. Consequently, this fee appears to be appropriate.

Therefore, the Director dismisses this allegation.

VII. CONCLUSIONS AND FINDINGS

Upon consideration of the submissions, responses by the parties, the administrative record herein, applicable law and policy, and for the reasons stated above, the Director of the FAA Office Airport Compliance and Management Analysis finds and concludes:

The Respondent is not in violation of Grant Assurance 23, *Exclusive Rights*. [See Issue (1)].

The Respondent is in violation of Grant Assurance 22, *Economic Discrimination* by unjustly discriminating against Paragon by imposing unreasonable skydiving liability and Products and Completed Operations insurance (Allegations 1 and 3); restricting solo skydiving operations (Allegation 6) and imposing higher 10% gross receipts fees on Paragon compared the 1.5% fee imposed on similarly-situated air tour operators (Allegation 7).

The Respondent is required to submit the additional information identified above to demonstrate compliance regarding requirements for commercial general liability insurance (Allegation 2); parking fees (Allegation 8); gate access fees (Allegation 9); additional space at the airport, (Allegation 11); and reporting of new employees (Allegation 13). [See Issue (2)].

The Respondent is not in violation of the Anti-Head Tax Act. [See Issue (3)].

ORDER

ACCORDINGLY, it is ordered that:

1. Arizona Department of Transportation shall present a corrective action plan to the FAA Western Pacific Region Phoenix Airports District Office within 30 days from the date of the Order. The plan shall explain in detail how ADOT intends to return the Airport to compliance with its Federal grant assurances through the elimination of unreasonable and unjustly discriminatory requirements on classes of commercial aeronautical activity operators other than air tour operators.
2. Pending the FAA's approval of a corrective action plan, this office will recommend to the Director, Office of Airport Planning and Programming (APP-1), to withhold approval of any applications submitted by the Arizona Department of Transportation for the Grand Canyon National Park Airport for amounts apportioned under 49 U.S.C. § 47114(d) and authorized under 49 U.S.C. § 47115. The FAA is authorized to withhold these approvals under 49 U.S.C. § 47106(d).
3. All Motions not specifically granted in this Order are denied.

RIGHT OF APPEAL

This Director's Determination under FAA Docket No. 16-19-16 is an initial agency determination and does not constitute a final agency decision and order subject to judicial review under 49 U.S.C. 46110 [See 14 CFR § 16.247(b)(2)]. A party to this proceeding adversely affected by the Director's Determination may file an appeal with the Associate Administrator within 30 days after date of service of the initial determination. If no appeal is filed within the time period specified, the Director's Determination becomes the final decision and order of the FAA without further action. A Director's Determination that becomes final because there is no administrative appeal is not judicially reviewable. [14 CFR § 16.33.]

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

Date

JASON THEUMA and PARAGON SKYDIVE, LLC, Complainant

v.

THE STATE OF ARIZONA, Respondent.

FAA Docket 16-19-16

INDEX OF ADMINISTRATIVE RECORD

The following items constitute the administrative record in this proceeding:

FAA Exhibit 1

Item 1 Complainant Jason Theuma and Paragon Skydive, LLC files Part 16 Complaint against State of Arizona, Arizona Department of Transportation (ADOT) on December 16, 2019.

Exhibit 1 Affidavit of Jason Theuma, Paragon co-owner, dated December 11, 2019.

Exhibit 2 Michael J. Halpin, ADOT Airport Manager, email to Ted Howard, ADOT Risk Management Director, and Kirk Beatty dated September 18, 2013, concerning airport terminal leases.

Exhibit 3 Michael J. Halpin, ADOT Airport Manager, email to Sonya Herrera, ADOT Administrative Services Division Director, and John Nichols dated October 16, 2013, concerning Paragon Skydiving Air Tour Fee.

Exhibit 4 Michael Halpin, ADOT Airport Manager, memorandum to Ted Howard, ADOT Risk Management Director, and Sonya Herrera, ADOT Administrative Services Division Director, concerning Paragon Skydiving Air Tour Lease, dated October 6, 2013.

Exhibit 5 FAA Skydiving Safety Risk Assessment letter signed by Brian Armstrong, Manager, FAA Western-Pacific Region Airports Division, Airport Safety and Standards Branch, dated September 17, 2017.

Exhibit 6 FAA Panel Review Draft of Grand Canyon National Park Airport Parachute Operations Safety Risk Management Document, dated February 2016.

Exhibit 7 Michael Thomas FYI forward email dated March 2, 2016, to Michael Klein, Michael Cockrum, concerning Anthony Garcia, FAA Airport Compliance Specialist, response email to Michael Thomas, concerning Comment: Parachute Jumping – Grand Canyon, dated March 2, 2016.

Exhibit 8	Ted Howard, ADOT Risk Management Director, response email to Michael Thomas, Sonya Herrera, ADOT Administrative Services Division Director, Trisha Lord, on email chain on Surety Bond, dated March 4, 2016.
Exhibit 9	Dayna Woodruff, ADOT Airport Finance Specialist, email to Nichole Zumbrunnen, concerning $5000 security deposit – Paragon Skydiving, dated March 4, 2016.
Exhibit 10	ADOT/Paragon Skydive Background Information, undated.
Exhibit 11	Arizona Department of Transportation Investigative Report Office of Civil Rights – File T6-088-12-16, dated February 15, 2017.
Exhibit 12	Scott Omer, Deputy Director – Operations, ADOT, response email to Jason Theuma, Paragon co-owner, concerning RE: Complaint Grand Canyon Airport, dated December 21, 2016.
Exhibit 13	Sonya Herrera, ADOT Administrative Services Division Director, forwarded email chain to Nichole Zumbrunnen concerning Paragon Lease at Grand Canyon National Park Airport Lease Amendment 24 Dec 16, dated December 27, 2017.
Exhibit 14	Jason Theuma, Paragon co-owner, email to Sonya Herrera, ADOT Administrative Services Division Director, concerning Paragon Lease Discussion, dated January 26, 2017.
Exhibit 15	Aoife Murphy, Paragon Director, email to Sonya Herrera, ADOT Administrative Services Division Director, concerning Paragon Skydive: Lease Negotiations email chain, dated April 1, 2017.
Exhibit 16	Nathan Carroll, ADOT Program Administrator, email to George Woods, Insurance Supervisor, ADOT Safety and Risk Management, concerning notes from Paragon meeting, dated June 20, 2017.
Exhibit 17	Aoife Murphy, Paragon co-owner, email to Sonya Herrera, ADOT Administrative Services Division Director, about Lease, dated June 30,2017.
Exhibit 18	Sonya Herrera, ADOT Administrative Services Division Director, response email to Trisha Lord concerning email chain on Preliminary feedback on Lease, dated September 22, 2017.
Exhibit 19	ADOT Office of Civil Rights memorandum on Supplement to the Civil Rights Paragon Skydive Complaint Investigation #T6-088-12-16 by Eddie Edison, Interim Civil Rights Administrator, dated October 2, 2017.

Exhibit 20	George Woods, Insurance Supervisor, ADOT Safety and Risk Management, email to Aoife Murphy and Jason Theuma, Paragon co-owners, about Paragon Skydive, LLC2017 Lease – Final, dated October 18, 2017.
Exhibit 21	Sonya Herrera, ADOT Administrative Services Division Director, response email to George Woods, Insurance Supervisor, ADOT Safety and Risk Management, and Aoife Murphy, and Jason Theuma, Paragon co-owners, about email chain RE: Paragon Skydive, LLC2017 Lease – Final, dated October 19, 2017.
Exhibit 22	Aoife Murphy, Paragon co-owner, response email to Sonya Herrera, ADOT Administrative Services Division Director, on RE: Paragon Skydive, LLC2017 Lease – Final, dated October 22, 2017.
Exhibit 23	Sonya Herrera, ADOT Administrative Services Division Director, response email Aiofe Murphy and Jason Theuma, Paragon co-owners, on email chain RE: Paragon Skydive, LLC2017 Lease – Final, dated October 23, 2017.
Exhibit 24	Ann Morgan, ADOT outside counsel, email to Aoife Murphy and Jason Theuma, Paragon co-owners, concerning Grand Canyon National Park Airport/Paragon Lease [FC-Email.FID8148449], dated November 15, 2017.
Exhibit 25	Aoife Murphy, Paragon co-owner, response email to Sonya Herrera, ADOT Administrative Services Division Director, concerning Lease Extension, dated November 27, 2017.
Exhibit 26	Ann Morgan, ADOT outside counsel, email to Aoife Murphy and Jason Theuma, Paragon co-owners, about Grand Canyon National Park Airport/Paragon Lease [FC-Email.FID8148449], dated November 28, 2017.
Exhibit 27	Richard Durden, Paragon attorney, response yahoo email to Ann Morgan, ADOT outside counsel, concerning email chain on RE: Grand Canyon National Park Airport/Paragon Lease [FC-Email.FID5186803], dated November 30, 2017.
Exhibit 28	Rick Durden, Paragon attorney, response yahoo mail to Ann Morgan, ADOT outside counsel, about Grand Canyon Airport – Paragon Skydive Lease, and attached undated ADOT/Paragon Skydive Background Information, dated December 13, 2017
Exhibit 29	Rick Durden, Paragon attorney, response email to Ann Morgan, ADOT outside counsel, about Grand Canyon Airport/Paragon, dated December 20, 2017.

Exhibit 30	Commercial Liability Insurance Policy, PCL-00-01, June 3, 2016.
Exhibit 31	Rick Durden, Paragon attorney, response email to Ann Morgan, ADOT outside counsel, on RE: Grand Canyon National Park Airport/Paragon [FC-Email.FID8148449], dated December 20, 2017.
Exhibit 32	Jacob Maskovich, Paragon outside counsel from Bryan Cave, LLC, letter to Ann Morgan, ADOT outside counsel, on Terminal Lease Agreement ("Lease") Dated March 4, 2016 Between Paragon Skydive, LLC ("Paragon") and the State of Arizona, Arizona Department of Transportation ("ADOT"), dated December 21, 2017.
Exhibit 33	Ann Morgan, ADOT outside counsel, response letter to Jacob Maskovich, Paragon outside counsel from Bryan Cave, LLP, on Terminal Lease Agreement Dated March 4, 2016 Between Paragon Skydive, LLC and the State of Arizona, Arizona Department of Transportation, dated December 21, 2017.
Exhibit 34	Rick Durden, Paragon attorney, response email to Ann Morgan, ADOT outside counsel, concerning RE: Grand Canyon National Park Airport - Paragon Skydive – Liability Insurance [FC-Email.FID8148449], dated January 15, 2018.
Exhibit 35	FAA letter of March 12, 2014, to County of Santa Clara Counsel and Deputy County Counsel on Compliance with FAA Docket No. 16-11-06 Director's Determination, dated December 19, 2011, as affirmed by FAA Final Agency Decision, dated August 12, 2013.
Exhibit 36	Aoife Murphy, Paragon co-owner, email to FAA Airports employees, Mike Williams, Manager, FAA Western-Pacific Region Airports Division, Phoenix Airports District Office; Kathy Brockman, FAA Airport Compliance Specialist; and Kevin Willis, Director, FAA Office of Airport Compliance and Management Analysis; and files a FAA Part 13 Informal Investigation against State of Arizona, dated January 19, 2018.
Exhibit 37	Rick Durden, Paragon attorney, email to FAA employees, Mike Williams, Manager, FAA Western-Pacific Region Airports Division, Phoenix Airports District Office, and Kathy Brockman, FAA Airport Compliance Specialist, concerning Paragon Skydive v. State of Arizona Part 13 Complaint, dated January 25, 2018.
Exhibit 38	Jacob Maskovich, Paragon outside counsel from Bryan Cave, LLP, response email to Doug Thornley, ADOT outside counsel, and Rick Durden, Paragon attorney, concerning email chain for RE: Paragon Lease Renewal [FC-Email.FID8148449], dated January 31, 2018.

Exhibit 39 Doug Thornley, ADOT outside counsel, email to Rick Durden and Jacob Maskovich, Paragon attorneys, concerning Skydiving Insurance [FC-Email.FID8148449], dated January 30, 2018.

Exhibit 40 Signed Grand Canyon National Park Airport Terminal Lease Agreement No. GCN-2018-001T Between The State of Arizona, Arizona Department of Transportation as "State" and Paragon Skydive, LLC, As "Lessee", with all initialed attachments, dated January 31, 2018.

Exhibit 41 Richard Durden, Paragon attorney, files a 14 CFR Part 302.403 Informal Complaint Paragon Skydive v. State of Arizona with attachments, to the Part 302 Complaint Docket, US Department of Transportation Assistant General Counsel, dated March 2, 2018.

Exhibit 42 Richard Durden, Paragon attorney, files an addendum to the 14 CFR Part 302.403 Informal Complaint Paragon Skydive v. State of Arizona with attachments, to the Part 302 Complaint Docket, US Department of Transportation Assistant General Counsel, dated April 4, 2018.

Exhibit 43 Rick Durden, Paragon attorney, forwarded email to Ann Morgan and Doug Thornley, ADOT outside counsels, about FW: Insurance Renewal/Coverages Requested - Paragon Skydive, LLC/Policy 1000318131-02, dated February 27, 2018.

Exhibit 44 Rick Durden, Paragon attorney, email to Ann Morgan, ADOT outside counsel, and Ted Howard, ADOT Risk Management Director, concerning Paragon Skydiving/ADOT Lease – Insurance, dated May 13, 2018.

Exhibit 45 Rick Durden, Paragon attorney, emails to FAA Airports employees, Brian Armstrong, Manager, FAA Western Pacific Region Airports Division, Airport Safety and Standards Branch, and Kathy Brockman, FAA Airport Compliance Specialist, on Paragon Skydive URGENT!!!!, dated May 16, 2018.

Exhibit 46 Brian Armstrong, Manager, FAA Western Pacific Region Airports Division, Airport Safety and Standards Branch, email to Rick Durden, Paragon attorney, and Kathy Brockman, FAA Airport Compliance Specialist, about Paragon Skydive v. State of Arizona Part 13 Complaint, dated June 8, 2016.

Exhibit 47 Mike Williams, Manager, FAA Western-Pacific Region Airports Division, Phoenix Airports District Office, letter to Matt Smith, ADOT, on Part 13.1 Complaint Notice of Potential Noncompliance and Request for Corrective Action, dated October 10, 2018.

Exhibit 48	Richard Durden, Paragon attorney, letter to John Halikowski, Director, Arizona Department of Transportation, regarding Paragon Skydive, dated September 23, 2019.
Exhibit 49	Andy Neuland, Aerospace Risk Management Group, email to Jason Theuma and Aoife Murphy, Paragon co-owners, on Liability Limits, dated May 11, 2018.
Exhibit 50	Tim Wanasek, National Account Manager, Falcon Insurance Agency, email to Aoife Murphy, Paragon co-owner, on Quote for Liability Insurance, dated May 11, 2018.
Exhibit 51	Randy Ottinger, US Parachute Association Director of Government Affairs, email to Rick Durden, Paragon attorney, on Paragon CGL Insurance, dated May 8, 2019.
Exhibit 52	FAA Letter to Jill Goldsmith, Chatham Town Manager, Chatham, MA, concerning review of proposed skydiving requirements at Chatham Municipal Airport, dated April 3, 2015.
Exhibit 53	Arizona Administrative Code, Department of Transportation – Aeronautics, Title 17, Chapter 2. Department of Transportation Aeronautics, dated December 31, 2011.
Exhibit 54	Michael J. Halpin, ADOT Airport Manager, email to Sonya Herrera, ADOT Administrative Services Division Director, and John Nichols, concerning Paragon Skydiving Air Tour Fee, dated October 16, 2013.
Exhibit 55	Grand Canyon National Park Airport, Lease Agreement No. 1-2016 Between State of Arizona, Arizona Department of Transportation As ("State") and Paragon Skydive LLC As ("Lessee"), signed March 4, 2016.
Exhibit 56	Ronald Jackson, Assistant General Counsel for US Department of Transportation, letter to Randy Ottinger, US Parachute Association Director of Government Affairs, regarding RE: Question on Taxation of Skydiving, unknown date.
Exhibit 57	Arizona Department of Taxation, Arizona Taxation Privilege Tax Ruling, TPR 93-13, unknown date.
Exhibit 58	State of Arizona Department of Revenue, Taxpayer Information Ruling LR 12-002, dated April 5, 2012.
Exhibit 59	Jacob Maskovich, Paragon outside counsel, response email to Doug Thornley and Ann Morgan, ADOT outside counsels, on email chain on RE: Corrected Paragon Lease [FC-Email.FlD8148449], dated January 31, 2018.

Exhibit 60 Ben Robideau, ADOT Senior Auditor, memorandum to Sonya Herrera, ADOT Administrative Services Division Director, and Scott Omer, ADOT Deputy Director, Business Operations regarding Paragon Skydive, LLC, dated October 6, 2017.

Item 2 FAA files Notice of Docketing on January 16, 2020.

Item 3 FAA dockets State of Arizona Motion for Extension of Time to Respond to Complaint on February 11, 2020.

Item 4 FAA issues Order on February 20, 2020, and grants State of Arizona Extension of Time to file its Answer or Motion by April 6, 2020.

Item 5 State of Arizona files Unopposed Motion for Extension of Time to Respond to the Complaint and Briefing Schedule on April 3, 2020.

Item 6 State of Arizona files Motion To Dismiss the Complaint of Paragon Skydive, LLC on April 20, 2020.

Exhibit 1 Affidavit of Matthew Smith, ADOT Airport Manager of Grand Canyon National Park Airport, dated April 20, 2020.

Exhibit 1 Unsigned Grand Canyon National Park Airport Terminal Lease Agreement Unnumbered Between The State of Arizona, Arizona Department of Transportation As "State" and Grand Canyon Rentals Adventures, LLC As "Lessee".

Exhibit 2 Grand Canyon National Park Airport Ground Lease Agreement Unnumbered Between The State of Arizona, Unsigned Arizona Department of Transportation As "State" and Grand Canyon Helicopters, Inc. As "Lessee".

Exhibit 3 Grand Canyon National Park Airport Ground Lease Agreement Unnumbered Between The State of Arizona, Arizona Department of Transportation As "State" and Maverick Airstar, LLC. As "Lessee" signed June 27, 2019.

Exhibit 4 Unsigned Grand Canyon National Park Airport Ground Lease Agreement Unnumbered Between The State of Arizona, Arizona Department of Transportation As "State" and Monarch Enterprises, Inc. As "Lessee".

Exhibit 5 Signed August 30, 2018, Grand Canyon National Park Airport Terminal Lease Agreement Unnumbered Between The State of Arizona, Arizona Department of Transportation As "State" and Westwind Aviation, Inc. As "Lessee".

Exhibit 6 Signed February 1, 2018, Grand Canyon National Park Airport Terminal Lease Agreement No. GCN-2018-001T Between The State of Arizona, Arizona Department of

Transportation As "State" and Paragon Skydive, LLC As "Lessee".

Exhibit 7 Unsigned Grand Canyon National Park Airport Amendment to Terminal Lease.

Exhibit 8 Signed December 31, 2017, Grand Canyon National Park Airport Amendment to Terminal Lease.

Exhibit 9 Signed February 1, 2018, Grand Canyon National Park Airport Terminal Lease Agreement No. GCN-2018-001T Between The State of Arizona, Arizona Department of Transportation As "State" and Paragon Skydive, LLC As "Lessee".

Exhibit 10 Arizona Administrative Code, Department of Transportation – Aeronautics, Title 17, Chapter 2. Department of Transportation Aeronautics, dated December 31, 2011.

Item 7 Complainant Jason Theuma and Paragon Skydive, LLC files Complainants' Opposition to Respondent' Motion to Dismiss on May 11, 2020.

Exhibit 61 State of Arizona files Unopposed Motion for Extension of Time to Respond to the Complaint and Briefing Schedule on April 3, 2020.

Exhibit 62 Paragon Skydiving/Grand Canyon Airlines/Maverick Airstar/Grand Canyon Helicopters/Papillon Helicopters/Westwind revenues from July 2017 to June 2018.

Exhibit 63 FY2020 GCN Tenant Revenue spreadsheet dated April 23, 2020.

Exhibit 64 Statement of Jason Theuma, Paragon co-owner, dated May 9, 2020.

Item A Paragon Skydiving/Grand Canyon Airlines/Maverick Airstar/Grand Canyon Helicopters/Papillon Helicopters/Westwind revenues from July 2017 to June 2018.

Item B Corrected Paragon Skydiving/Grand Canyon Airlines/ Maverick Airstar/Grand Canyon Helicopters/Papillon Helicopters/Westwind revenues from July 2017 to June 2018.

Item C Two pictures of Grand Canyon Airlines aircraft parked on ramp.

Item D Marked up copy of Fixed Base Operator Ground Lease Amendment between State of Arizona and Grand Canyon Airlines, dated October 1, 1997.

Item E Undated one picture of alleged Grand Canyon Airlines fuel trucks parked outside of leasehold.

Item F Undated three pictures of Westwind aircraft pictures on ramp.

Item G ADOT email chain on Code question about commercial aircraft parking fees, dated August 24, 2017.

Item H Email and signed ADOT Non-employee agreement for airport housing, dated December 30, 2019.

Item I Updated picture of alleged other tenant's ATVs parked at airport.

Item J Updated picture of alleged Paragon Skydive ATV at airport.

Exhibit 65 Statement of Susan Amey, dated April 29, 2020. Attached updated and unsigned Commercial Liability Insurance Policy PCL-00-01.

Exhibit 66 ADOT email chain on Code question about commercial aircraft parking fees, dated August 24, 2017.

Exhibit 67 Undated picture of parked ATV towing equipment.

Exhibit 68 US Department of Transportation Office of General Counsel opinion letter on question of taxation on hot air balloon flights, dated January 29, 2010.

Exhibit 69 Visual Flight Rules aeronautical chart of Grand Canyon National Park Airport area.

Item 8 State of Arizona files The State of Arizona's Unopposed Motion for Extension of Time to file Reply in Support of Motion to Dismiss, dated June 10, 2020.

Item 9 State of Arizona files The State of Arizona's Reply in Support of Motion to Dismiss the Complaint of Paragon Skydive, LLC, dated June 19, 2020.

Appendix 1 Legal case *Phelps* v. *Firebird Raceway, Inc.*, 210 Ariz. 403 (AZ 2005).

Exhibit 11 FAA cover memorandum from Nicholas Reyes, Manager, FAA Western-Pacific Flight Standards Division, to Brian Armstrong, Manager, FAA Western-Pacific Region Airports Division, Airport Safety and Standards Branch, dated October 9, 2014, with attachment FAA memorandum on safety determination of parachuting at Grand Canyon National Park Airport, dated September 23, 2014.

Exhibit 12 FAA Skydiving Safety Risk Assessment letter to Jason Theuma, Paragon Skydive co-owner, signed by Brian Armstrong, Manager, FAA Western-Pacific Region

Airports Division, Airport Safety and Standards Branch, dated October 29, 2014.

Exhibit 13 Undated Paragon Skydive parachute landing area site assessment.

Exhibit 14 Mike Williams, Manager, FAA Western-Pacific Region Airports Division, Phoenix Airports District Office, chain of emails with Paragon Skydive attorney and State of Arizona counsel concerning Part 13 Complaint, dated June 20, 2018.

Exhibit 15 Matthew Smith, ADOT Administrative Services Division Director, letter to Tim Morrison, Program Manager, FAA Western-Pacific Region Airport Division, Phoenix Airports District Office, dated Jul 31, 2018.

Exhibit 16 Arizona Department of Transportation Grand Canyon National Park Airport Market Rent Study and Rates and Charges Analysis, dated March 28, 2018.

Item 10 State of Arizona files Respondent's Status Report Regarding Status of Claims, dated July 23, 2020.

Item 11 Email records between July 16, 2020 and November 24, 2020.

Exhibit 1 Rick Durden email dated April 20, 2020, to Suzi Neel and FAA Docket, with copy to ADOT counsels, asking for password to open files, docketed on April 21, 2020.

Exhibit 2 Clark Matthews's response emailed dated April 20, 2020 to Rick Durden, Suzi Neel, and FAA Docket, with copy to ADOT counsels advising that password was not needed, docketed April 20, 2020.

Exhibit 3 FAA Senior Attorney, Joseph Manges, email request on July 16, 2020, to both parties' counsel for Part 16-19-16 status report, docketed July 16, 2020.

Exhibit 4 Suzi Neel, Lewis/Brisbois, email request dated June 9, 2020, to FAA Public Docket requesting Part 16s, docketed June 9, 2020.

Exhibit 5 FAA Public Docket email response dated June 9, 2020, to Suzi Neel, where to locate online requested Part 16s, docketed June 9, 2020.

Exhibit 6 FAA Public Docket additional email response dated June 9, 2020, to Suzi Neel, where to locate online requested Part 16s, docketed June 9, 2020.

Exhibit 7 Rick Durden email dated September 4, 2020, to Paul Rupprecht and other counsel, concerning the lack of applicability of Products and

Completed Operations endorsement for Commercial General Liability insurance for skydiving activities, with attached letter dated August 21, 2020, from Kenneth Burkhead, Aerospace Risk Management Group, Inc. to Jason Theuma, Paragon co-owner, docketed September 4, 2020.

Exhibit 8 Paul Rupprecht response email dated October 6, 2020, to Rick Durden concerning State's position on Products and Completed Operations endorsement for Commercial General Liability insurance, docketed October 6, 2020.

Exhibit 9 Rick Durden response email dated September 4, 2020, to Paul Rupprecht and other counsel, concerning Paul Rupprecht's October 6, 2020 email, docketed October 7, 2020.

Exhibit 10 Rick Durden email dated October 8, 2020, to Paul Rupprecht and other counsel, discussing concerns with the applicability of Products and Completed Operations endorsement for Commercial General Liability insurance for skydiving operators, docketed October 8, 2020.

Exhibit 11 Rick Durden email dated November 11, 2020, to Paul Rupprecht and other counsel, asking whether there are any claims in the Complaint that can be resolved, docketed November 12, 2020.

Exhibit 12 Paul Rupprecht response email dated November 20, 2020, to Rick Durden, asking about scheduling a call to discuss the claims, docketed November 21, 2020.

Exhibit 13 Rick Durden response email dated November 23, 2020, to Paul Rupprecht, tentatively setting call for December 3, 2020.

Exhibit 14 Paul Rupprecht response email dated November 24, 2020, to Rick Durden, tentatively scheduling call for December 3, 2020, to discuss the claims, docketed November 24, 2020.

Exhibit 15 Rick Durden response email dated November 24, 2020, to Paul Rupprecht, agreeing to call for December 3, 2020, docketed November 24, 2020.

Item 12 Link to Electronic Code of Federal Regulations, Title 14, Chapter I, Subchapter A, Part 1-Definitions and Abbreviations, dated August 2, 2021, https://www.ecfr.gov/cgi-bin/text-idx?SID=42a92f3811019a3bcab71f14144d4d92&mc=true&node=pt14.1.1&rgn=div5

Item 13 FAA issues Order for Extension of Time for Respondent to File Answer, dated October 8, 2020.

Item 14 Complainant Notice of Substitution of Counsel docketed by Jol Silversmith, dated January 11, 2021.

Item 15 FAA issues Notice for Extension of Time until May 18, 2021, dated February 19, 2021.

Item 16 Grand Canyon National Park Airport Master Record 5010, dated April 5, 2021.

Item 17 FAA issues Notice for Extension of Time until August 13, 2021, dated May 21, 2021.

Item 18 State of Arizona files Respondent's Updated Status Report Regarding Status of Claims, dated May 26, 2021.

Item 19 Link to FAA Airport Improvement Program Grant Assurances (2/20) https://www.faa.gov/airports/aip/grant_assurances/media/airport-sponsor-assurances-aip-2020.pdf, dated June 21, 2021.

Item 20 FAA AIP grant history for Grand Canyon National Park Airport, dated July 20, 2021.

Item 21 Link to FAA Order 5190.6B, *Airport Compliance Manual*, published September 30, 2009, dated August 2, 2021, https://www.faa.gov/airports/resources/publications/orders/compliance_5190_6/media/5190_6b_appZ.pdf

Item 22 Link to FAA Advisory Circular 150/5190-7, Minimum Standards for Commercial Aeronautical Activities, published August 28, 2006, dated August 2, 2021, https://www.faa.gov/airports/resources/advisory_circulars/index.cfm/go/document.current/documentnumber/150_5190-7

Item 23 FAA issues Notice for Extension of Time until October 6, 2021, dated August 13, 2021.

Item 24 State of Arizona files Respondent's Second Updated Status Report Regarding Status of Claims, dated October 6, 2021.

Item 25 FAA issues Notice for Extension of Time until December 7, 2021, dated October 7, 2021.

Item 26 FAA issues Notice for Extension of Time until January 21, 2022, dated December 7, 2021.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 21, 2022, I caused to be e-mailed and to be placed in the Federal Express a true copy of this Order for FAA Docket 16-19-16, addressed to:

For the Complainant

Jol A. Silversmith, Esq.
Barbara M. Marrin, Esq.
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For the Respondent

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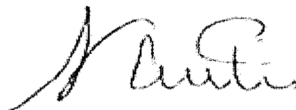
Copy to:
FAA Part 16 Airport Proceedings Docket (AGC-600)
FAA Airport Compliance Division (ACO-100)
FAA Western-Pacific Regional Office (AWP-600)



Natalie Curtis
Office of Airport Compliance
and Management Analysis