

Memorandum

U.S. Department of
Transportation
Office of the Secretary
of Transportation

Subject: **ACTION:** Resolution of "FAA Monitoring of Airport
Date:
Revenues at Phoenix Sky Harbor International
Airport," R9-FA-4-001

From: Reply to
Melissa J. Allen
Assistant Secretary for Administration

Attn.

To: Kenneth M. Mead
Inspector General

The Office of Inspector General requested assistance resolving four recommendations in the subject report. These recommendations involved several aspects of the airport establishing a rate structure for renting airport property. Specifically, the open recommendations called for implementing a system that ensures the airport receives fair rental value for all leased airport property, renegotiating a number of leases, receiving fair rental value for airport land used by non-airport related public entities, and ensuring the airport fund was compensated for the relief afforded some airport tenants in exchange for creating new, non-airport related jobs. Inasmuch as these issues hinged on the appropriate application of applicable policy and regulations, we requested a legal opinion from the Department's General Counsel to serve as the basis for a resolution agreement. A copy of the legal opinion is attached.

During the time that the legal opinion was in preparation, a number of changes occurred at the airport that created an opportunity to resolve most of the issues referred for resolution assistance. Specifically, the airport implemented a new system for determining rental fees for leased airport property, that resulted in new leases being negotiated at market value for the private and non-airport public entities using airport property.

In its legal opinion, General Counsel found that the City:

1. may continue cost-based lease arrangements for the America West's and Southwest Airline's aviation maintenance facilities and for the Cutter Aviation's

fixed base operations,

1. should renegotiate America West's corporate office lease, since it is for non-aeronautical use and should be leased at market value,
1. need not renegotiate Garrett Aviation Service's leases since they are for aeronautical use,
1. appears to have paid fair rental value to the airport for its use of airport land for the Department of Public Works, and has arranged for the Local Alcohol Reception Center and the Village Settlement for Treatment of Alcoholism to make appropriate payments,
1. should not be required to reimburse the airport fund for rental payments transferred to airport related job programs, but should reimburse the airport fund for any lost or imputed rent that may have been diverted to non-airport related job programs that did not benefit the airport.

During the process of formulating this resolution agreement, we updated our information relating to each of the findings.

- A. America West's original lease with the Airport was a ground lease which provided for America West to construct two facilities on the site – a maintenance facility and a corporate office building. The maintenance hanger was constructed as proposed; however, the corporate offices were built at another site in Tempe. America West retained the ground lease for the site where the corporate facility was originally proposed, and uses this land for parking to support its maintenance facility.

We understand that both the maintenance facility and its support facilities, such as parking, qualify as aeronautical uses, and may be rented accordingly.

- A. The airport received \$332,279.80 in rent from the Local Alcohol Reception Center and the Village Settlement for Treatment of Alcoholism. FAA also verified that the airport received rent from the Department of public works.

We understand that all of these facilities are no longer on airport grounds, and therefore no further rental adjustments are necessary.

- A. FAA indicates that Mera Bank and Bank of America paid sums that were used only to pay for on-the-job training wages and fringe benefits for trainees providing services to the airport. FAA indicated that payments were not made for off-airport jobs.

Based on these findings, and the changes that occurred at the airport since the audit was completed, recommendations 1, 3, 5, and 8 are considered resolved with final action complete. FAA is aware that OIG may request further documentation related

to the updated information described above, and has agreed to make it promptly available upon request.

I appreciate the opportunity to work with you in resolving this issue. If you have any questions, or if we can be of further assistance, please contact Martin Gertel of my staff on x65145.

cc: Ms. Hunt, JA-10
Ms. Kessler, C-10
Mr. Bennett, AAS-1
Mr. Page, APA-200