COMMITTEE AGENDA: 5/18/12
ITEM: A

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND MEMBERS OF THE AIRPORT COMPETIVENESS COMMITTEE

FROM: William F. Sherry, A.A.E., Director of Aviation

SUBJECT: **Proposed Terms and Conditions of the West Side Request for Proposal**

DATE: May 18, 2012

Approved

Date 5/11/12

BACKGROUND

At the April 3, 2012, City Council meeting staff received direction to move forward with the issuance of a Request for Proposal (RFP) for the development of the west side of the Airport, with deferral of further study regarding resolution of FAA airfield design standards conformance issues (including the issue of whether to reopen or permanently close Runway 11-29). Council's direction broadened the staff's recommendation of a proposal for the development of a 15.5 acre fixed based operator (FBO) leasehold to the following selection criteria:

1. *Solicit proposals for any use allowed under the Airport Master Plan EIR that is also within FAA standards and can be developed whether or not Runway 11-29 is open or closed;*
2. *Allow interested entities to propose acreage needs and best location to site their proposed use on the available 44-acre West Side development land area, with the City reserving the right to approve the final location; and*
3. *Consider potential for more than one use to locate on the West Side if multiple complimentary uses respond to the RFP.*

In addition, Council directed that the RFP selection criteria should:

1. *Make total revenue generated to the Airport the most important criterion; and*
2. *Make revenues to the General Fund a secondary criterion.*

Finally, Council directed that staff present the draft RFP terms and conditions at the May 18, 2012 Airport Competitiveness Committee prior to issuing it to potential responders. This memo contains the proposed terms and conditions for the West Side RFP.

ANALYSIS

The draft terms and conditions, as well as information related to the RFP process are contained in exhibit A (attached) and are explained below.

RFP Process and Evaluation

General Process

The goals and objectives of the West Side RFP are consistent with Council direction:

- Development of approximately 44 available acres on the West Side of the Airport, with consideration given to the possible land needs associated with future land "takes" from existing leaseholds.
- The maximization of revenue generated to the Airport as the primary goal with the maximization of revenue to the City of San Jose ("City") General Fund as a secondary goal
- Consistency with the West Side Development Principles

The RFP contains three key parameters:

1. ***Acknowledgment and Planning for the Possible Impact of the Closure of Runway 11-29:*** The RFP will allow proposals for any use allowed under the Airport Master Plan EIR, and within FAA standards that can be developed whether Runway 11-29 is open or closed. Because of the potential for closure of Runway 11-29, the RFP will require that proposers acknowledge and plan for that possibility in their proposal as a minimum requirement. Interested parties may propose acreage to be leased and the best location for their proposed use on the available land, with the City reserving the right to approve the final size and location.

2. ***Lease Area:*** Because it is possible that Runway 11-29 could be reopened, thus requiring the adjacent taxiway to be moved farther west and impacting the existing fixed based operators, *ultimately only 27acres of land are available for development.*

3. ***Uses:*** The RFP is structured to allow for general aviation uses consistent with the master plan, allowing the City to consider the potential for approving more than one use on the available land if multiple complementary proposers respond to the RFP.

Proposers will be limited to one proposal although it may contain more than one type of use.

The RFP will follow established City policies and procedures to ensure a fair and transparent process, including:

- an evaluation panel of:
  1. City staff with applicable expertise;
  2. outside stakeholders;
  3. an expert in general aviation land use development from another airport; and

- an independent appeals officer from the City Finance Department to resolve protests.

The general make up the evaluation panel is noted in the attached Exhibit A.

Evaluation Process

The evaluation of proposals will consist of two parts: a pass/fail evaluation followed by an assessment of the proposals against the criteria described below and noted in Exhibit A.

The pass/fail evaluation is intended to ensure that only proposals meeting all requirements of the RFP are considered for award. Key criteria include:

- completeness of the proposal against the RFP requirements;
- conformance to Minimum Standards;
- minimum ground rental rate requirement (currently $2.00 per square foot per year);
- minimum experience of the proposer's management team (applied to FBOs & SASOs only);
- the minimum capital development investment ($1 million per acre);
- acknowledgement of potential changes to airfield configuration; and
- acceptance of the exemplar ground lease and operating agreement.

The evaluation criteria reflect Council direction to have revenue to the Airport as the primary consideration and with revenue to the City as a secondary consideration. Evaluation of the financial proposal will comprise 60% of the overall rating, with 40% based on revenue to the Airport and 20% based on revenue to the City. The revenue to the Airport will include: 1) proposing the annual ground rent for the initial five years of the lease; and 2) an opportunity to propose minimum annual guaranteed fuel flowage revenue. Consideration of activity-based revenue – such as fuel flowage and landed weight revenue from charter operations – will also be factored into the revenue to the Airport so long as such revenues are guaranteed. Revenue to the City will be based on the total estimated local taxes to be generated by the proposal.

Other evaluation criteria, and the percentage of their value in the evaluation process, include:

- the quality of the proposed facilities and the amount of capital investment (15%);

- the business and management plan demonstrating how new business will be generated and how elevated customer service standards will be maintained (15% - This criteria will be applied to FBOs and SASOs only. Proposals for private and corporate operations will be evaluated on a comparable basis); and
- how the proposal will provide benefits to the local community such as low and moderate job creation, impacts to the local economy, and environmental stewardship (10%).

General Terms and Conditions

Amount, Location and Size of the Lease

Proposers will state the use, size and preferred location of the proposed development. The location of the development will ultimately be determined by the City on the basis of consideration of the highest rated proposals and mix of complimentary uses, if any. As noted previously, only 27 of the 44 acres are

available for development. The land will be leased "as is" and it will be the responsibility of proposers to connect to the taxiway system as necessary for their facility.

Length of the Lease

The lease term and minimum investment will be in accordance with the City's Long Term Ground Leasing Policy for the Airport. The policy allows for lease terms based on the amount of capital investment. The greater the investment, the longer the lease term. For example, a $3 million capital investment allows for a lease term of 8 to ten years, while a capital investment of $23 million allows for a lease term of up to 30 years. Under the policy, investments of more than $23 million allow for a negotiated (rather than pre-determined) lease term.

Lease Rent

As previously noted, annual ground rent through the term of the lease will be proposed, but will in no case be less than the most recent appraised value of $2.00 per square foot per year. The ground rent will be adjusted annually by CPI and every 5 years by appraisal, beginning in the sixth year of the agreement. If CPI is negative or appraisal is less than the initial full rate established in the agreement, the initial full rate in the agreement will be used. Commencement of ground rent will be at fifty percent (50%) of the full rate on execution of lease agreement, with the full ground rent rate due on the earlier of 24 months or when the facility receives either a Certificate of Occupancy or a Temporary Certificate of Occupancy.

Fuel Flowage Fees

Fuel flowage fees will be in accordance with the rate resolution. The current fee is $0.10 per gallon of fuel pumped into aircraft. The fuel flowage fee is set by rate resolution and is currently undergoing re-evaluated. Proposers will have the opportunity to propose a minimum annual guaranteed fuel flow revenue.

Landing Fees

Landing fees for charter operations conducted by tenant will also be included and will be commensurate with those in the agreement with the existing operators.

Minimum Investment

Proposers must make a minimum capital investment of $1 million per acre of total area of leased property. Proposed facilities must meet all requirements of the General Aviation Minimum Standards, and applicable ordinances, laws, and regulatory requirements.

Proposal Guarantees

Several proposal guarantees will be included in the RFP and the Ground Lease and Operating Agreement. All proposers must submit a Proposal Bond in the amount of $25,000. In addition, the successful proposer (or proposers) will be required to provide the following guarantees:

- A performance deposit in the form of a Letter of Credit ("LOC") in the amount of 20% of the proposed capital investment. Start of construction must take place no later than 24 months from lease execution or default will have occurred and deposit is forfeited to the City.

- The certificate of occupancy for the proposed facilities must be received within 3 years of execution of the lease agreement or default will have occurred and deposit is forfeited to the City. The performance deposit will be returned to the tenant upon issuance of the certificate of occupancy for the proposed facilities.

- Construction performance and payment bonds will be required for the full value of the initial improvements.

- A security deposit, in the form of a letter of credit, in the minimum amount of one year of full ground rent.

Staff believes the aforementioned terms and conditions are consistent with the direction provided by Council on April 3, 2012, as well as with the West Side Development Principles and recommends Committee concurrence. In addition, staff believes the proposed review and evaluation process will result in a fair evaluation of all submitted proposals.

Additional Consideration

As noted previously, until the airfield conformance standards issues are resolved, a portion of the developable 44 acres of land will need to be preserved to allow for relocation and reconfiguration of existing leaseholds should Runway 11-29 re-open. In a worst case scenario, 17 acres needs to be set aside for this purpose (12 acres needed for relocation of existing tenants and an additional 5 acres of frontage reserved to accommodate taxiway clearance). Because of its shape and size, another five acres at the far north end of the available property is not suitable for FBO development thus leaving 22 acres available for development. Therefore, if the available land is granted to uses other than a FBO, there will not be enough land available to develop a second FBO in the future.

Moreover, with uncertainty regarding the availability of additional land resulting from future changes to the airfield configuration as a result of resolving standards conformance issues, developers may very likely – and unnecessarily – submit constrained development proposals. This dynamic would have the effect of compromising the overall quality of West Side development. Restricting the RFP to a 15-acre FBO only and allowing for a future 7-acre expansion area mitigates the issues noted above.

West Side Revenue to the Airport and Airport Financial Projections

It is essential to understand why Council's direction to make total revenue to the Airport the most important selection criterion is a critical factor in West Side development.

An updated financial forecast was completed by Ricondo & Associates in June 2011 in conjunction with the issuance of the 2011A/B General Airport Revenue Bonds. This forecast assumed a modest passenger growth of 2.1% - 2.5% through FY2017. At this level of growth, the cost per enplanement (CPE) was projected to be in the $14 - $15 range, well above the $12 level that Council directed the Airport to achieve. Due to the successful completion of the Terminal Area Improvement Program (TAIP) and

overall program savings, staff estimated at that time that approximately $96 million of the 2004 and 2007 bond proceeds would be unspent. Based on bond counsel advice and information provided by the Airport, these unspent proceeds were assumed to be used towards principal and interest in future years. The unspent bond proceeds were applied under a conservative approach for purposes of calculating certain financial projections, including CPE and debt service coverage ratios. With the application of unspent bond proceeds, the CPE was reduced to the $11-$12 range through FY2017.

The Airport is able to achieve the $11-$12 CPE if all assumptions in the financial forecast model hold true (i.e. passenger growth, revenues, expenses). Based on information to date, the Airport will not be able to achieve the growth anticipated in FY12, and has reduced the growth assumption to flat in FY13. The lack of passenger growth has placed additional pressure on the CPE. The use of unspent bond proceeds represents a one-time, stop gap measure to hold CPE down for the near future. However, *increases in ongoing revenues and/or additional decreases in expenses will be necessary to counter any deviations from the financial forecast once the unspent bond proceeds are depleted.*

/s/
WILLIAM F. SHERRY, A.A.E.
Director of Aviation

For questions please contact Dave Maas, Deputy Director of Planning and Development, at (408) 392-3630.

Attachments: Exhibit A: General Aviation RFP and Lease Agreement Term Sheet

Exhibit A

General Aviation RFP & Lease Agreement Term Sheet

❑ *Goals and Objectives*

- Development of approximately 44 available acres on the West Side of the Airport, with consideration given to the possible land needs associated with future land "takes" from existing lease holds.
- Maximization of revenue generated to the Airport is the primary goal, and maximization of revenue to the City of San Jose ("City") General Fund as a secondary goal
- Consistency with the West Side Development Principles

❑ *Uses*

- Any use allowed under the Airport Master Plan EIR that is also within FAA standards and can be developed, whether Runway 11-29 is open or closed.
- Interested parties may propose acreage to be leased and the best location on the site for their proposed use on the available 44 acres, with the City reserving the right to approve the final size and location.
- The City may consider the potential for approving more than one use on the West Side if multiple complementary proposers respond to the RFP.

❑ *RFP Process*

- **Single step process (i.e. no separate prequalification phase)**
- **Independent appeal officer from the Finance Department**
- **Evaluation Panel membership:**
  - Representative from the Airport Finance division
  - Representative from the Chamber of Commerce
  - Representative from the Office of Economic Development
  - Representative from the Airport Operations division
  - Property Management Executive from an outside airport

❑ *Evaluation Criteria*

- **Qualifications of Proposer – Pass/Fail**
  - Completeness of Proposal Against RFP Requirements
  - Conformance to Minimum Standards
  - Minimum Rental Requirement ($2.00 per square foot per year)
  - Minimum Experience Requirements of Management Team (FBO & SASO only)
  - Minimum Capital Development Investment - $1 million per acre
  - Consideration of potential changes to airfield configuration
  - Lease modifications – no lease modifications will be considered
- **Financial Proposal – 60%**
  - Revenue to the Airport (40%)
    - ✓ Ground Rent is Proposed
    - ✓ Opportunity to propose minimum annual guaranteed fuel flow revenue
    - ✓ Forecast collection of landed weight fees for charter operations conducted by tenant
    - ✓ Strength of Financial Pro Forma
    - ✓ Financial capacity of Respondent
  - Revenue to the City (20%)
    - ✓ Estimated local taxes to be generated
- **Quality of Facilities/Investment – 15%**
  - Capital Investment
  - Facility Design
  - Environmentally Sustainable Development
  - Reasonableness of Development Schedule
- **Business Plan/Management Plan – 15%** (FBOs and SASOs only. Private and corporate operations will be evaluated on comparable criteria)
  - Management Plan
  - Marketing Plan
  - Customer Amenities

- Description of How Business Will Elevate Service Standards

- **Benefit to Surrounding Commercial and Residential Community – 10%**
  - Local employment, including Low and Moderate income Job Creation
  - Environmental Benefits
  - Economic Impact to the Community/Local Economy
  - Commitment to Community Improvement and Service
- **More than one type of aeronautical service facility may be recommended for award if:**
  - The proposal meets all of the selection criteria.
  - The proposal is a complementary service to other proposals that will be recommended for award

❑ *General Terms*

- **Lease Premises:**
  - Use, size and location to be determined through the RFP process. Location to be negotiated with successful proposers
  - "As is with disclosures" to be noted in special considerations.
  - Respondent to make connection to taxiway system
- **Lease Term:**
  - Lease term will be in accordance with the Long Term Leasing Policy.
- **Ground Rent:**
  - Annual Ground Rent to be proposed, with a minimum rent set forth in the RFP and equal to highest per square foot general aviation ground rental rate (currently $2.00 per square foot per year).
  - Adjust annually by CPI and every 5 years by appraisal, beginning in the sixth year of the agreement. If CPI is negative or appraisal is less than initial full rate established in the agreement, the initial full rate in the agreement will be used.
  - Commencement of ground rent at fifty percent (50%) of the initial full rate on execution of lease agreement, with full ground rent due

on the earlier of 24 months, or when the facility receives a Certificate of Occupancy or Temporary Certificate of Occupancy.

- **Fuel flowage in accordance with the rate resolution.**
  - Minimum annual guaranteed fuel flowage if proposed
- **Landing fees for charter operations conducted by tenant**
- **Capital Investment:**
  - Minimum capital investment of $1 million per acre of total area of leased property.
- **Standards:**
  - Must meet all requirements of the General Aviation Minimum Standards.

❑ *Proposer Guarantees*

- The awarded proposer (or proposers) is required to provide a performance deposit in the form of a Letter of Credit ("LOC") in the amount of 20% of the proposed capital investment.
  - Start of construction must take place no later than 24 months from lease execution or default will have occurred and deposit is forfeited to the City.
  - Certificate of occupancy for initial facilities must be received within 3 years of execution of the lease agreement or default will have occurred and deposit is forfeited to the City.
  - Performance deposit will be returned to tenant upon issuance of certificate of occupancy for initial facilities
- **Proposal Bond in the amount of $25,000 required**
- **Faithful performance bond and Construction Payment Bond required for the full value of the initial improvements.**
- Security Deposit – LOC in the minimum amount of one year of full ground rent.

❑ *Minimum Qualifications of Proposer*

- Proposers offering services to the public must have a minimum of three (3) active facilities of size equal to proposed facility, with proposed

management team having a minimum of five (5) years experience operating comparable facilities.