



CITY OF
HAYWARD
HEART OF THE BAY

12

DATE: November 16, 2010
TO: Mayor and City Council
FROM: Robert A. Bauman, Director of Public Works
SUBJECT: Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing for Financing of Airport Development Improvements by Airport Property Partners LLC

RECOMMENDATION

That Council conducts a TEFRA hearing and adopts the attached resolution approving the issuance, by California Statewide Communities Development Authority, of Tax-Exempt Obligations to Airport Property Partners LLC in an aggregate amount not to exceed \$5,000,000.

BACKGROUND

On December 15 2009, Council approved the purchase and lease assignment of the Volo Holdings LLC leasehold (previously Hayward Jet Center) to Hayward FBO LLC, wholly owned by Airport Property Partners LLC (APP). This leasehold is now doing business as APP Jet Center and has a lease term through December 15, 2053, as well as a requirement to construct certain leasehold improvements with a minimum investment of \$2,000,000. In order to finance the purchase of the leasehold by APP, Council held a Tax Equity and Fiscal Responsibility Act (TEFRA) hearing that same evening and approved the sale of \$5,000,000 in tax free bonds by California Statewide Communities Development Authority for the property acquisition.

APP is a Delaware Limited Liability Company formed in 2008 for investment in airport properties, generally, and Fixed Base Operations (FBOs), in particular. Mr. Thom Harrow is the Chief Executive Officer of APP and the sole owner of the company. APP's financial backing comes principally from Greenwich Investment Management (GIM), a Greenwich, Connecticut investment advisory firm. GIM manages in excess of \$350 million for its clients and has made numerous successful airport real estate related investments, including the air cargo sector, with locations at Ft. Lauderdale and Jacksonville, Florida and, more recently, in the FBO sector, including FBOs in Illinois, Connecticut, and Texas.

DISCUSSION

At this time, Mr Harrow is requesting approval of up to \$5,000,000 in additional tax free borrowing, again through California Statewide Communities Development Authority (California Communities), in order to finance the improvements on the leasehold. Site improvements included

in the lease require renovating an existing hangar and office building, removal of aging underground storage tanks, and construction of a new, above ground fuel storage facility. Mr Harrow is now proposing to add new hanger space totaling 12,000 square feet, as well as miscellaneous site improvements, including parking ramp upgrades and landscaping.

Since approval of the lease assignment, work has been proceeding on design and permit approvals for the required leasehold improvements. The Hayward Fire Department approved removal of the underground fuel storage facility and temporary fueling procedures on October 25, 2010. Work to remove the old underground tanks and provide necessary soil remediation has begun and will take approximately three months to complete. Delays in obtaining approval of design for the new above ground fueling facility, coupled with the additional improvements and design changes, have increased the estimated improvement cost to about \$3.4 million.

Financing and Required TEFRA Hearing: Typically, California Communities sets the not-to-exceed borrowing amount high to cover costs of the financing and to ensure another hearing is not required if initial estimates are exceeded. As California Communities will be doing these bonds through a private placement in increments of \$25,000, only the amount required and supportable by revenue projections will be sold. There is no risk to the City or the Airport because neither the City or the Airport is issuing the bonds and bear no responsibility for repayment. As with any other mortgage arrangement, in the event the borrower defaults on the bond payments, the trustee could foreclose on the leasehold interest and take over operation of the FBO until securing a subsequent operator. Because California Communities only sells the bonds to select high-worth investors, the investors are responsible to review the financial analysis provided to California Communities; thus, default is not likely. The source of payment for the bonds is the projected revenue from the operation of all four FBOs owned by APP. For federal tax purposes, the City is considered the owner of the improvements on the leasehold (normally, this actually occurs at the termination of the lease); however, the leaseholder is still responsible for possessory interest taxes and for all liabilities associated with the improvements, including the bond obligations.

The City has been a member of the California Community Joint Powers Authority since 1998. The issuance of tax-free bonds by California Communities does require holding a public Tax Equity and Fiscal Responsibility Act (TEFRA) hearing, and California Communities has requested the City conduct that hearing for them. As noted last year, airport improvements are one of the specific categories that are eligible for tax-free financing under the California Communities Program. TEFRA hearings have taken place in the past when the City issued bonds, usually for affordable housing. The purpose of a TEFRA hearing is to allow public comment, either for or against issuance of tax exempt bonds. California Communities has designated Vanessa Lowry of the firm of Greenberg Traurig as Bond Counsel. She has reviewed the associated documents and this staff report. Staff requests that Council hold the hearing and approve the necessary documents.

FISCAL IMPACT

Because this action will not change the terms of the Hayward FBO, LLC leasehold, staff expects the fiscal impact to the Airport Fund to be minimal, although some increase in fuel flowage fees can be expected from the improvements to APP Jet Center. Also as noted above, the City has no responsibility for any of the indebtedness assumed by APP.

ECONOMIC IMPACT

An important factor in the success of an airport is having well maintained and operated FBO facilities. This action is one aspect of ensuring that each FBO on the Airport contributes to that success. In addition to the direct revenue to the Airport, staff also anticipates that the facility upgrades will serve to attract additional corporate and transient traffic, which can have other economic benefits for the City.

PUBLIC CONTACT

A public notice of the TEFRA hearing was published in the *Daily Review* on October 30, 2010.

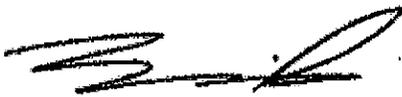
SCHEDULE

Airport staff anticipates that Mr. Harrow will be able to complete the permit application process necessary to construct the additional leasehold improvements within 6-months and complete construction within 18-months, clearly meeting the requirement of completion of the lease-defined improvements by December 31, 2013.

Prepared by: Lloyd Partin, Airport Manager

Recommended by: Robert A. Bauman, Director of Public Works

Approved by:



Fran David, City Manager

Attachments

Attachment I: Draft Resolution for Tax Free Financing through California Communities (TEFRA Hearing)

HAYWARD CITY COUNCIL

RESOLUTION NO. 10 _____

Introduced by Council Member _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD APPROVING THE ISSUANCE BY CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY OF TAX-EXEMPT OBLIGATIONS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$5,000,000, FOR THE PROJECT (AS DEFINED BELOW), AND AUTHORIZING RELATED ACTIONS

WHEREAS, Hayward FBO LLC, a California limited liability company (the "Borrower"), the managing member of which is Airport Property Partners, LLC, a Delaware limited liability company, which has previously acquired certain leasehold and related rights in a full service fixed base of operations ("FBO") private and corporate jet aviation facility (the "Facility"), comprised of four one-story buildings (between 4,500 and 10,000 square feet each), a fuel island and a manufactured building serving as the temporary FBO terminal, which Facility is commonly known as the "APP Jet Center Hayward" located at the west side of Skywest Drive between Sueirro Street and Hesperian Boulevard and now desires to finance the further improvement and rehabilitation of the Facility and the construction of (1) a new above-ground aviation fuel farm, (2) an approximately 12,000 square foot aircraft storage hangar and (3) a 2,500 square foot passenger terminal to expand the Facility (collectively, the "Project"); and

WHEREAS, the Facility is located on land owned by the City of Hayward (the "City") and leased to the current ground lessee of the APP Jet Center Hayward pursuant to one or more ground leases and related agreements (collectively, the "Ground Lease") and it is these rights which the Borrower has previously acquired, the acquisition of which and the renovation and improvement of the Facility was financed with tax-exempt obligations issued in 2009; and

WHEREAS, the Borrower further wishes to rehabilitate and improve the Facility in accordance with the provisions of the Ground Lease; and

WHEREAS, the Borrower desires to Finance the Project through the issuance by CSCDA of additional tax-exempt obligations in an aggregate principal amount not to exceed \$5,000,000 ("2010 Obligations"); and

WHEREAS, the parties intend that the City will be the federal tax owner of the Project for purposes of Section 142(b) of the Internal Revenue Code of 1986, as amended, following the issuance of the 2010 Obligations; and

WHEREAS, the City has determined that there are significant public benefits in Financing the renovations and improvements of the Facility; and

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward