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January 24, 2012

**Via Facsimile 510-583-3636 and Email: List-Mayor-Council@hayward-ca.gov,
CityClerk@hayward-ca.gov**

Mayor Michael Sweeney and
City Council Members
City of Hayward
City Hall Building
777 B Street
Hayward, CA 94541-5007

**Re: Resolution Authorizing the City Manager to Negotiate and Execute a Ground Lease and
Option Agreement with Hayward Airport Development, LLC**

Dear Mayor Sweeney and Fellow Council Members

On behalf of our clients Airport Property Partners, LLC and Hayward FBO LLC, (collectively "APP") we urge the Council to reject the above-referenced Resolution which is listed as Item No. 6 under "Legislative Business" on the regularly scheduled January 24, 2012 Council agenda. The bases for the action APP urges is set forth in detail in earlier correspondence to the City dated December 16, 2011 and December 19, 2011, copies of which are attached hereto and incorporated herein and are thus part of the administrative record before the City. We do not believe that any actions or considerations undertaken by the City, the Council Airport Committee or City staff has altered in any way the validity or credibility of the arguments APP has asserted.

In addition, APP objects to the inconsistent and arbitrary application of the City's purported "policy" to require all airport tenants to contribute towards the Airport's Aircraft Rescue and Fire Fighting Services ("ARFF"). According to the Staff Report on the proposed Resolution, ". . . the staff has also established an ARFF contribution rate for other new hangar developments of \$1.00/sf of new building *consistent with prior developments.*" (emphasis added). The proposed \$1.00/sf is anything but consistent with prior developments. My client leases approximately 35,000 square feet of hangar space, yet was required to contribute \$100,000 to ARFF. Although the City argues that the charge to my client was tied specifically to addressing fire department concerns with the proposed replacement fueling facility and not with new hangar space, this argument is factually wrong. The demand for a \$100,000 contribution from my client to ARFF was made prior to the issue involving the replacement fuel tank. I would also note that the proposed lease to Hayward Airport Development involves the installation of a new fuel storage tank presumably for self-fueling, yet the required contribution to ARFF is approximately one-third of what the City demanded of APP. This is patently unfair and further evidence of discriminatory treatment leading to the creation of an unfair economic advantage.

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APP is also concerned with the self-fueling rights being granted to Hayward Airport Development LLC, and specifically with how those rights will be defined, limited and enforced.

To reiterate, and in conjunction with those issues and claims raised in our earlier correspondence, APP believes that by adopting the above-referenced resolution, the City has violated its own procurement process, has breached the obligation of good faith and fair dealing imposed in every agreement, has denied my client the economic benefits and expectations for which it bargained by creating an unfair economic advantage, has potentially violated the Federal Aviation Administration's Grant Assurances provisions by creating and endorsing unjust, unfair and discriminatory economic practices, and has exposed itself to claims that it has made a gift of public funds by encumbering property at rates far below its own stated fair market value.

We thank you for the opportunity to address the City on this very important issue and should you have any questions, please let us know.

Sincerely,



John Lynn Smith

Enclosures – letters of Dec. 16 and 19, 2011
cc: Michael Lawson, City Attorney

JLS:gso

Letter of December 16, 2011

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December 16, 2011

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Mayor Michael Sweeney
and City Council Members
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Airport Property Partners, LLC

Dear Mayor Sweeney and Fellow Council Members :

This firm represents Airport Property Partners, LLC and Hayward FBO LLC, which as you may know operate hangar and fueling facilities at the Hayward Executive Airport (known as APP Jet Center) pursuant to a lease with the City of Hayward. It is our understanding that the City Council is being asked to approve at their December 20, 2011 meeting a lease arrangement with Hayward Airport Development LLC ("HAD") that will provide for phased-in use and operation of various airport facilities. This new lease arrangement grew out of a May 2009 Request for Proposals for Redevelopment of the former Air National Guard site and Development of Aircraft Storage Hangars at the Hayward Executive Airport. Pursuant to that RFP, the City was "interested in a proposal that maximizes the use of the site as a multi-dimensional development, incorporating commercial, non-aviation development, private hangar development and taxi-lane access and associated ramp space." The RFP established minimum specifications and requirements and contemplated significant capital expenditures on the part of the successful proponent. The "product" of this RFP process appears to be the proposed lease agreement with HAD, in which event the City has failed to abide by its own procurement requirements, and instead participated in a sole-source negotiation in violation of the City's own established procedures, and to the detriment of other potential proposers and existing Airport tenants. Moreover, the proposed terms of the lease arrangement with HAD clearly appear to be far below market rates which implicate well-established prohibitions against the sale or encumbrance of public property at less than market value, and may rise to the level of a breach of the City's obligation of good faith and fair dealing in contracts it has with existing tenants, such as Airport Property Partners. My client's specific concerns include:

1. The proposed lease/project proposal with HAD is contrary to the City's procurement procedures as established in the 2009 RFP for Development of Aircraft Storage Hangars. Even though the City reserved the right to "amend or cancel" the RFP, it was required to provide notice of such actions and instead appears to have done a complete overhaul of the procurement process without notice and for the intended benefit of only one proposer. Moreover, there is no indication in the December 12,

2011 report from the Public Works Director to the Council Airport Committee as to how, if any, of the specific requirements of the RFP are to be met under the current lease proposal. For example, there is no indication that a firm commitment has been made by the proposer, or is required by the City, for development and use of the entire site, or a defined portion of the site, nor does there appear to be a specified capital requirement. As such, the City's actions appear arbitrary and capricious and in violation of its own established procurement process.

2. The proposed lease terms with HAD are far below market rate. Although the actual lease between HAD and the City has apparently not been made public, the above-referenced Public Works Director report indicates that hangar rental rates are at \$0.52 per square foot per year. This amount is merely a fraction of the hangar rental rates at the Airport posted on the City's website. The City specifies in published materials that rental rates for hangar space at the Airport is approximately \$3.76 per square foot per year, which is reflective of market rates. See FY2011 Master Fee Schedule at p. 100. The rent in the proposed lease with HAD is a fraction of that amount, and the hangar space being rented is of a higher quality and size than any others currently available at the Airport. The City's entry into this market as a "landlord" offering substantially below-market rates raises two critical issues. First, as you know, the City as a municipal corporation does not have the right or power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation. Consistent with this prohibition, the City cannot sell or otherwise encumber property at below its appraised fair market value. Second, by participating in a below-market arrangement with a competitor of my client, the City exposes itself to a claim that it has breached the obligation of good faith and fair dealing implied in every contract. In this case, the City and my client have a contractual relationship through a ground lease at the Airport which further requires that my client invest additional capital in hangar space it owns. My client entered into that arrangement, and made those commitments, in good faith and with the full expectation that the City would take no action to deliberately undermine its ability to fairly compete. However, in this instance, the City, as the landowner, has created an unlevel playing field by advantaging one competitor through a rent agreement that is far below market and not available to other participants or tenants.

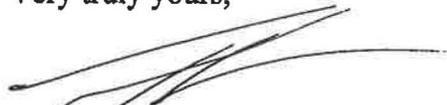
3. As a recipient of grant funding from the Federal Aviation Administration, the Hayward Airport cannot engage in economic discrimination. Specifically, under applicable FAA Grant Assurances provisions, in the event the "sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions." In other words, the FAA prohibits unjust, unfair and discriminatory economic practices.

We hope that the City will reevaluate the proposed lease arrangement in light of its own procurement practices as well as those requirements that it deal fairly with all Airport tenants. We thank you for your consideration, and we are of course happy to answer any questions you may have.

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Very truly yours,



John Lynn Smith

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cc: Michael Lawson, City Attorney

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Letter of December 19, 2011

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Airport Property Partners, LLC

Dear Mayor Sweeney and Fellow Council Members:

I write to follow up on an earlier letter I sent on December 16, 2011 on behalf of my clients Airport Property Partners, LLC and Hayward FBO, LLC, (known as APP Jet Center) regarding a proposed lease of hangar space with Hayward Airport Development LLC ("HAD"). Although we appreciate the fact that the City has reconsidered the earlier proposed below-market rent, we believe that the newly proposed rent of \$1.00 per square foot per year for the hangar space as set forth in its now-issued staff report is still woefully below market and cannot be lawfully justified. In short, we do not believe that the new proposed rent changes any arguments raised in our December 16th letter, and in fact the explanation for the new rent expressed in the staff report still does not justify such a deviation from market rates. Indeed, there is no dispute that the public rate for City-owned hangars is about \$3.76 per square foot per year, and that this is presumably based on market rates. The staff report seems to indicate that a nearly 70 percent discount from this rate is warranted because of the age of the hangar, the fact that other land is required to be leased, the risk of financial difficulties in dealing with a brown-field site, and the disruption caused to HAD by the remaining clean-up to be done. All of these factors are merely mentioned and not adequately discussed or supported. Moreover, there is no acknowledgment that the hangars subject to the lease agreement are superior to others at the Hayward Airport; there is no specification of what work needs to be done and at what cost to update the hangars; the remediation to be done at the site is the responsibility of the Air Force, not HAD and disruptions caused by that remediation could in fact affect other hangar operators, as well. Perhaps most importantly, there is no evidence that the City followed its own required procedures in making such a dramatic adjustment to the market rent. According to the most recent Master Fee Schedule, "Every four (4) years, staff will conduct a market analysis to ensure that hangar rents are consistent with the prevailing market rates. If analysis demonstrates that hangar rents require modification, such shall be accomplished during the next hangar adjustment period. Such rates shall be charged unless otherwise

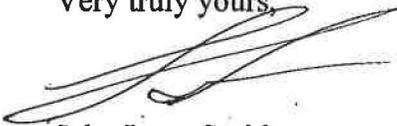
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City Council Members
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directed by the Council." Although the Council is clearly being asked to approve a below-market hangar rate, there is no analysis or factually supported basis for dramatically slashing an otherwise approved market rate. We would ask that this analysis be done before any negotiations are completed and a lease approved.

We thank you for your attention to this matter, and should you have any questions, please give me a call.

Very truly yours,



John Lynn Smith

JLS:rp