



**SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY
STAFF REPORT**

Item No.
8

Meeting Date: **APRIL 4, 2013**

Subject:

**Authorize the President/CEO to Execute a Letter of Agreement with
Landmark Aviation GSO-SAN, LLC**

Recommendation:

Adopt Resolution No. 2013-0038, authorizing the President/CEO to execute a Letter of Agreement with Landmark Aviation GSO-SAN, LLC relating to development permitting.

Background/Justification:

On April 23, 2012, the Authority entered into a long-term lease with Landmark Aviation GSO-SAN, LLC ("Landmark") for the development of a new corporate and general aviation facility on 12.4 acres of Authority property located on the north side of the Airport ("Lease"). A map denoting the site is attached as Attachment 1.

The Lease outlines timeframes for permitting, construction, and rental obligations. The anticipated schedule at the time the Lease was executed was as follows:

- May 1, 2012 - Lease Commencement Date
- May 1, 2013 - Completion of Design and Permitting; Commencement of Construction
- May 1, 2014 - Completion of Design Construction; Commencement of new Rental Rates

The above schedule presumed a reasonably aggressive period of time to complete the overall development. The Lease, nevertheless, recognizes delays may occur within the above schedule and consequently outlines "Delay Provisions". Authority staff and Landmark representatives have been working together in good faith to obtain the necessary permits to allow Landmark to commence construction. Unfortunately, it does not appear a Coastal Development Permit will be issued prior to May 1, 2013, thus activating the "Delay Provisions" which allow for postponement (day for day) of the construction completion date and commensurate rent commencement date.

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Another section of the Lease, however, creates an ambiguity that requires clarification between the parties. In particular, the Lease states that in the event Landmark does not obtain its Coastal Development Permit by May 1, 2013, the lease will terminate and be void. Although the application for the Coastal Permit was submitted in December 2012, the Coastal Commission has indicated the matter may not be calendared until May or June 2013 (closely following Landmarks' May 1st deadline). Given the Authority and Landmark both have acted in good faith and being the intent of the parties to proceed with the development, it is prudent for the Board to authorize the President/CEO to agree to toll this date and recognize it as part of the "Delay Provisions".

Fiscal Impact:

The current rent provisions of the Lease with Landmark provide for the following rent obligations to the Authority:

	May 1, 2012 – April 30, 2014	May 1, 2014*-April 30, 2015
Annual Rent	\$2,000,000	\$5,250,000
Approx. Daily Rent (based on 360 day yr.)	\$5,556	\$14,583

*Note: The rent commencement date is the earlier of: 1) the date construction is complete and a certificate of occupancy is issued; or 2) 12 months after the site is available for development and no delay conditions exist.

In the event construction is unable to be completed by May 1, 2014, as a result of a qualified delay; the Lease allows for a day-for-day postponement of the required construction completion date as well as the rent commencement date on the newly developed site.

Rent escalations beyond April 30, 2015 remain unchanged by this item.

Authority Strategies:

This item supports one or more of the Authority Strategies, as follows:

- Community Strategy
 Customer Strategy
 Employee Strategy
 Financial Strategy
 Operations Strategy

Environmental Review:

- A. CEQA: This Board action, as an administrative action, is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act ("CEQA"), as amended. 14 Cal. Code Regs. §15378. This Board action is not a "project" subject to CEQA. Cal. Pub. Res. Code §21065.
- B. California Coastal Act Review: This Board action is not a "development" as defined by the California Coastal Act. Cal. Pub. Res. Code §30106.

Equal Opportunity Program:

Not applicable.

Prepared by:

VERNON EVANS
VICE PRESIDENT FINANCE

RESOLUTION NO. 2013-0038

A RESOLUTION OF THE BOARD OF THE
SAN DIEGO COUNTY REGIONAL AIRPORT
AUTHORITY AUTHORIZING THE PRESIDENT/CEO
TO EXECUTE A LETTER OF AGREEMENT WITH
LANDMARK AVIATION GSO-SAN, LLC RELATING
TO DEVELOPMENT PERMITTING

WHEREAS, on April 23, 2012 the San Diego County Regional Airport Authority ("Authority") entered into a lease with Landmark Aviation GSO-SAN, LLC ("Landmark") for the development of a new corporate and general aviation Fixed Base Operator ("FBO") facility on 12.4 acres of Authority property located on the north side of San Diego International Airport ("Airport") ("Lease"); and

WHEREAS, the Lease outlines timeframes for permitting, construction, and rental obligations; and

WHEREAS, the Lease, in Section 5, "Improvements", recognizes delays may occur within the schedule and specifically outlines "Delay Provisions" and the handling of such situations; and

WHEREAS, Authority staff and Landmark representatives have been working together in good faith to obtain the necessary permits to allow Landmark to commence construction; and

WHEREAS, the Lease, in Section 49, "Conditions to Lease", requires that the Coastal Development Permit application be acted upon by the California Coastal Commission ("Commission") prior to May 1, 2013; and

WHEREAS, Commission staff has informed the Authority and Landmark the item cannot be placed on the Commission calendar for action until May or June 2013; and

WHEREAS, by appropriate waiver, Landmark and the Authority desire to clarify Section 49 of the Lease to allow for the Commission hearing date beyond May 1, 2013, as an accepted Delay Provision as contemplated under Section 5 of the Lease and allow the Lease to continue in full force and effect.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby authorizes the President/CEO to execute a Letter of Agreement with Landmark Aviation GSO-SAN, LLC relating to development permitting; and

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BE IT FURTHER RESOLVED the Board instructs the President/CEO to include within the Letter of Agreement that Section 49 of the Lease be clarified that Landmark has met its obligations to submit for a Coastal Development Permit within twelve months (12) of the date of the Lease; and

BE IT FURTHER RESOLVED the Board instructs the President/CEO to include within the Letter of Agreement that the Lease shall continue in full force and effect beyond twelve months (12) of the date of the Lease and shall not be void as otherwise may be interpreted by Section 49 of the Lease; and

BE IT FURTHER RESOLVED the Board instructs the President/CEO to include within the Letter of Agreement that the delay in obtaining the Coastal Development Permit be handled as a Delay Provision as contemplated through Section 5 of the Lease; and

BE IT FURTHER RESOLVED the Board finds that this Board action is not a "project" as defined by the California Environmental Quality Act ("CEQA") (California Public Resources Code §21065); and is not a "development" as defined by the California Coastal Act (California Public Resources Code §30106).

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 4TH day of April, 2013, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

TONY R. RUSSELL
DIRECTOR, CORPORATE SERVICES/
AUTHORITY CLERK

APPROVED AS TO FORM:

BRETON K. LOBNER
GENERAL COUNSEL

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