NBAA

April 26, 2013

The Honorable Pam O'Connor
Mayor, City of Santa Monica
1685 Main Street, Room 209
Santa Monica, CA 90401
pam.oconnor@smgov.net

RE: Proposed Landing Fees at Santa Monica Airport

Dear Mayor O'Connor:

I am writing on behalf of the National Business Aviation Association (NBAA). NBAA represents the interests of more than 9,500 member companies in promoting the interests of business aviation and has numerous members based at and/or otherwise using the Santa Monica Municipal Airport (KSMO).

We understand that at its April 30, 2013 meeting, one of the Council's agenda items (#11-A) will be the consideration of a study that proposes a 250%+ increase in the landing fees assessed at KSMO. As you know, the Santa Monica Airport Commission failed to endorse the proposal at its meeting on April 22, 2013. We previously communicated to the Airport Commission on March 28, 2013 that we are confident this proposal, if adopted, would be inconsistent with federal law, federal regulations, and the federal grant assurances that are in effect at KSMO. Adoption also would likely result in more litigation and the possibility of substantial penalties – risks that can be avoided if the proposed increase is rejected or, postponed until all interested parties have been given a fair opportunity to review and comment.

(1) ***Specifically, the proposed landing fee would generate an unlawful revenue surplus at KSMO.*** When a U.S. airport sponsor accepts federal funds or federal property – and KSMO has done both – the economic system of that airport becomes a "closed loop". That is to say, all revenues earned by the airport from activities on the airport property, whether from aeronautical or non-aeronautical users, must be expended for airport purposes (with a few exceptions that are not pertinent here). This includes landing fees as well as all rents and fees collected from other activities on airport property. This sustainability requirement is provided in federal statute (49 U.S.C. §§47107(b) and§ 47133); federal regulation (61 Fed. Reg. 31994); the FAA's Airport Compliance Manual (Order 5190.6B); and the grant assurances. As the FAA has frequently noted – including in the context of the last enforcement proceeding involving landing fees at SMO – this principle is commendable "since it reduces the economic impact for aviation users and to the aviation public."[1]

A further principle is that an airport cannot accumulate a substantial revenue surplus or use that surplus for other than airport purposes. The creation of such a surplus is strong evidence

[1] Bombardier Aerospace Corp. v. City of Santa Monica, FAA Docket No. 16-03-11, Director's Determination, at 43 (January 3, 2005).

that landing fees are unreasonable – and if a surplus is transferred off the airport, it also amounts to unlawful revenue diversion. As recently as two months ago, this apparently was not an issue at KSMO. On February 25, 2013, the airport made its annual budget submission to the Airport Commission. That submission was consistent with earlier airport budget submissions; the HR&A economic study previously commissioned by the City for the "visioning" process; and the FAA's airport accounting guidelines. Indeed, the FAA reviewed and approved the current KSMO landing fees reflected in that budget. Specifically, the February 25 submission shows that today KSMO is in compliance with the federal sustainability requirements.

- The airport is operating at slightly above break-even under the current landing fee structure: in FY2013-14, revenues are expected to be $4.4 million and expenses to be $4.3 million. The operating surplus would be minimal and is projected to decrease in the following fiscal year.
- Operating revenue is expected to increase from an additional land lease for a parking lot.
- The HR&A study, in addition to confirming the break-even status of the airport, found that it generates $1 million per year in tax and license revenues for the City's General Fund with a total positive economic impact on the community of $275 million per year.

This is a good example of the sustainability principle working well, and the numbers speak for themselves. However, an increase in landing fees has been proposed that would increase airport revenues, and thus the surplus, by more than $1.4 million dollars per year. There does not seem to be any justification for this.

The calculation and purported justification of the proposed landing fee increase in the most recent version of the study ("Financial Projections – Proposed Landing Fee Calculations") provided to airport users, dated April 17,[2] included at best a sketchy budget. While there may be other problems with it (it is not nearly transparent enough to extract significant details), its major and most obvious fault is the abandonment of the principle of sustainability. It omits all revenues from <u>non-aeronautical</u> uses at the airport; isolates the airfield costs; and then divides the alleged airfield costs by projected landing weights. It treats non-airfield and non-aeronautical revenues as if they were earned on City property off the airport or as if those revenues simply did not exist. We are confident this is plainly unlawful and would not survive review by the FAA.

Additionally, at the meeting with tenants on April 18, other incomplete financial analyses were circulated by staff without explanation. The agenda for the April 30 meeting was made public on or about April 22, and it appears to rely not on the budgetary information prepared by the airport staff but instead on the City's Comprehensive Annual Financial Report, which purports to show that the airport is operated at a deficit. As discussed below, airport users have not been provided a reasonable amount of time to analyze that document and compare it with the airport's own figures, but it is clear that the City's analysis allocates substantially more overhead, materials and supplies and other expenses, including depreciation, than the airport itself indicates it incurs.

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[2] In their report on agenda item #11-A, the City Attorney and Director of Public Works included a study which is dated March 13, but includes revisions that were not actually included in the study presented to airport users until the version dated April 17. We assume that this is an unintentional mistake.

(2) The City has not engaged in the required consultations with airport users. FAA, in its rates and charges policy for assurance obligated airports, has made clear that airports must engage in "meaningful" discussions with their users before implementing any changes to their rates and charges, and also specified that certain categories of background information must be provided.[3] In other words, the process must be transparent and open.

Unfortunately, the process to date in our view has been opaque and limited. The few documents that have been provided to airport users are incomplete and inconsistent. Notably, the "Financial Projections – Proposed Landing Fee Calculations" study, even as revised, does not explain many of its key assumptions, such as the methodology underlying its allocations of costs between airfield and other costs centers. Moreover, at the meeting held with tenants on April 18, a second set of revenue and expense figures for KSMO – extracted from pages of citywide financial reports – were provided, but do not match the figures in the study and no explanation or reconciliation has been provided. The City's now apparent reliance on a broad-brushed Comprehensive Financial Report raises numerous questions while answering few. Simply put, the City's failure to provide KSMO airport users with a meaningful opportunity to review, understand, and comment upon the landing fee proposal renders it inconsistent with the grant assurances – and if adopted by the Council, we believe the measure would not survive review by the FAA.

(3) The proposal appears to rely on costs that are actually a form of revenue diversion. As noted the grant assurances prohibit revenue diversion; revenue generated by an airport must be used only for airport-related purposes, and cannot be sent "downtown" for general use by a municipality. Additionally, although a municipality can seek reimbursement for certain services provided to an airport (e.g., police and fire protection), it must do so within six years – and any loans to an airport must be structured on formal and commercial terms. Although the April 17 study again fails to provide adequate detail, it shows that the airport is being charged for "indirect cost allocation" and "professional services," as well as interest. At meetings of the Airport Commission, it was suggested that via one or more of these categories KSMO is being charged for the costs of the City's prior unsuccessful effort to ban Class C/D aircraft operations at KSMO. If true, that would be a form of revenue diversion, because airports can be charged only for services in support of an airport "that are otherwise allowable." Nor is it clear that any loans between the airport and the City have been structured to comply with FAA requirements. To the extent that the study which purports to justify the proposed landing fee increase now before the Council may be flawed by reliance on costs that are actually a form of revenue diversion, the proposal if adopted by the Council again would, we believe, fail review by the FAA.

(4) The proposal appears to economically discriminate against airport tenants. The landing fee proposal, in addition to raising the fees by 250%+, also would apply the fees to the approximately 370 aircraft based at KSMO for the first time. Currently, the landing fee applies only to transient aircraft. Although the FAA does not specifically prohibit landing fees from being applied to based aircraft, caution must be taken to ensure that by doing so, based aircraft are not effectively charged twice for the costs of airport infrastructure; e.g., once through the landing fee, and again through fuel flowage and other fees assessed only to tenants, directly and

[3] 61 Fed. Reg. 31994, at 32018 (§ 1.1.1 and § 1.1.2).

indirectly. Indeed, in enforcement proceedings, FAA has consistently noted that the rationale which justifies charging landing fees only to transient aircraft is that they otherwise might not contribute to an airport's upkeep, because they do not necessarily pay any of the fees imposed upon tenants. However, the April 17 study simply does not address this issue, stating only the annual landed weight of based aircraft and how much those aircraft would pay in fees under the proposal.[4] No attention evidentially has been given to how much based aircraft already contribute to the airport via other means, and how also imposing landing fees upon them would survive review by the FAA.

Accordingly, NBAA strongly urges the Council to recognize that the landing fee proposal should not be approved in its current form. At a minimum, the four issues raised here must be given careful further scrutiny. NBAA respectfully submits that the proposal, at least as now presented, is sufficiently flawed that it would not survive review by the FAA.

Further we understand that at its April 30 meeting, the Council will also consider a resolution regarding the "visioning" process for the future of Santa Monica Municipal Airport (# 8-A). Although the resolution would not, if adopted, impose any specific regulatory measures at this time, we want to remind the Council that the FAA has indicated that the grant assurances now in effect at KSMO will remain applicable until 2023 and therefore many if not most of the "visioning" proposals would be impermissible if implemented before that date. Moreover, to the extent that KSMO has surplus property commitments, they may not be permissible at <u>any</u> future date.

Finally, even though Santa Monica has indicated that it does not intend to accept any further Airport Improvement Program grants from the federal government, there are numerous means by which the City – and, ultimately, its residents and taxpayers – could be at risk if it pursued a course of action that is contrary to the grant assurances. For example, as established in the context of the City's prior unsuccessful effort to ban Class C/D aircraft operations at KSMO, FAA can issue a cease and desist order that directly prohibits it from engaging in non-compliant conduct.

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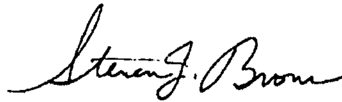
[4] In their report on agenda item #8-A – which nominally concerns the visioning proposal but also discusses landing fees – the City Attorney and Director of Public Works assert that collecting the fee from based aircraft would ensure that their owners "pay their fair share of maintenance costs and operations based on their actual use of the facilities," but likewise fail to devote any attention to the fees that they already pay.

We urge you and the Council as responsible representatives of the City's residents not to take any steps that would be in conflict with federal grant assurance requirements, undercut KSMO's vital role in the national airspace system, or impose unnecessary burdens on the citizens of Santa Monica.

Sincerely,



Steve Brown
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