

# REPLACEMENT

COUNCIL AGENDA: 10/02/07

ITEM: 6.2



## Memorandum

TO: HONORABLE MAYOR AND  
CITY COUNCIL

FROM: Nadine N. Nader

SUBJECT: SEE BELOW

DATE: September 20, 2007

Approved

*Key Wines*

Date

*9/20/07*

**SUBJECT: APPROVAL OF A CONTRACT AMENDMENT WITH HENSEL PHELPS CONSTRUCTION COMPANY FOR THE DESIGN AND CONSTRUCTION OF THE AIRPORT TERMINAL AREA IMPORVEMENT PROGRAM, APPROVAL OF NEW ON-AIRPORT RENTAL CAR OPERATIONS AND LEASE AGREEMENTS, AND APPROVAL OF RENTAL CAR CUSTOMER FACILITIES AND TRANSPORTATION FEES AT THE AIRPORT [Transportation and Environment Committee referral 9/17/07 – Item (e)]**

On September 17, 2007 staff presented a report for approval of a contract amendment with Hensel Phelps Construction Company for the design and construction of the Airport Terminal Area Improvement Program, approval of new On-Airport Rental Car Operations and lease agreements, and approval of Rental Car Customer Facilities and Transportation fees at the Airport to the Transportation and Environment Committee.

Councilmember Liccardo motioned to accept the staff report and requested that the item be cross-referenced for full Council consideration, Councilmember Chirco seconded the motion.

Please note that this is an item that meets Criterion 1 under the Public Outreach section of the memorandum because it does require Council action on the use of public funds greater than \$1 million. Attached is the report that was distributed to the Transportation and Environment Committee on Monday, September 10, 2007.

*for*   
NADINE N. NADER  
Agenda Services Manager



# SUPPLEMENTAL

COUNCIL AGENDA: 10/02/07  
ITEM: 6.2

## Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Katy Allen  
William F. Sherry, A.A.E  
Larry D. Lisenbee

**SUBJECT:** SEE BELOW

**DATE:** 09-13-07

Approved

Date

9/14/07

**COUNCIL DISTRICT:** Citywide

**SUBJECT: APPROVAL OF A CONTRACT AMENDMENT WITH HENSEL PHELPS CONSTRUCTION COMPANY FOR THE DESIGN AND CONSTRUCTION OF THE AIRPORT TERMINAL AREA IMPROVEMENT PROGRAM, APPROVAL OF NEW ON-AIRPORT RENTAL CAR OPERATIONS AND LEASE AGREEMENTS, AND APPROVAL OF RENTAL CAR CUSTOMER FACILITIES AND TRANSPORTATION FEES AT THE AIRPORT**

### REASON FOR SUPPLEMENTAL

The memorandum cited an incorrect PP number in the CEQA section. The CEQA section should read:

CEQA: Resolution Nos. 67380 and 71451, PP 07-162.

The Cost Summary/Implications section included a typographical error, misstating the impact to the total budget. The corrected section follows:

### COST SUMMARY/IMPLICATIONS

On June 13, 2006, Council approved an Amendment to the Airport Master Plan to allow for approximately \$1.5 billion in improvements that will be constructed through the year 2017. The additional cost associated with a larger Rental Car Facility consists of \$105,274,000 to be added to the Hensel Phelps contract for design and construction and \$3,726,000 for insurance, program management, project management, technology and overhead. This is consistent with the program that Council approved. This action will accelerate amounts budgeted in future fiscal years and will increase the total budget in the 5 year Capital Improvement Plan by \$109,000,000. Additional future appropriation actions may be necessary to continue the design-build effort dependent upon the schedule established by Hensel Phelps.

TRANSPORTATION AND ENVIRONMENT COMMITTEE

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KATY ALLEN

Director, Public Works Department



WILLIAM F. SHERRY, A.A.E.

Director of Aviation  
Airport Department



LARRY LISENBEE

Budget Director

For questions please contact HARRY FREITAS, DEPUTY DIRECTOR, PUBLIC WORKS at (408) 535-8300.



# Memorandum

**TO:** TRANSPORTATION AND  
ENVIRONMENT COMMITTEE

**FROM:** Katy Allen  
William F. Sherry, A.A.E  
Larry D. Lisenbee

**SUBJECT:** SEE BELOW

**DATE:** 08-31-07

Approved

Date

9/6/07

**COUNCIL DISTRICT:** Citywide

**SUBJECT: APPROVAL OF A CONTRACT AMENDMENT WITH HENSEL PHELPS CONSTRUCTION COMPANY FOR THE DESIGN AND CONSTRUCTION OF THE AIRPORT TERMINAL AREA IMPROVEMENT PROGRAM, APPROVAL OF NEW ON-AIRPORT RENTAL CAR OPERATIONS AND LEASE AGREEMENTS, AND APPROVAL OF RENTAL CAR CUSTOMER FACILITIES AND TRANSPORTATION FEES AT THE AIRPORT**

## RECOMMENDATION

Acceptance of staff's report and direction to forward the below recommendations to the City Council:

- (a) Adoption of a resolution authorizing the City Manager to negotiate and execute a First Amendment to the Contract with Hensel Phelps Construction Co. for design and construction of the Airport Terminal Area Improvement Program to increase maximum compensation by \$105,274,000 for the design and construction of a larger Consolidated Rental Car Garage, increasing maximum compensation from \$512,771,000 to a total Contract amount not to exceed \$618,045,000; to extend the Project Element Acceptance deadline for the Consolidated Rental Car Garage up to 18 months; to redistribute the fixed fee payable under the Contract to Hensel Phelps to account for revisions to the scope of project elements subsequent to approval of the Contract, and to provide for the reallocation of unexpended compensation between project elements.
- (b) Adoption of a resolution authorizing the City Manager to negotiate and execute new On-Airport Rental Car Operations and Lease Agreements with the current On-Airport Rental Car Companies, Avis, Budget, Dollar, Enterprise, Fox, Hertz, Thrifty, and Vanguard, for On-Airport Rental Car operations at the Consolidated Rental Car Garage for a maximum term of ten (10) years from commencement of On-Airport Rental Car operations at the

Consolidated Rental Car Garage, and a 15 year renewal period, subject to mutual agreement of the City and the rental car companies

- (c) Adoption of a resolution authorizing the City Manager to negotiate and execute new On-Airport Rental Car Operations and Lease Agreements with companies not currently operating at the Airport, but commencing operations at the Airport at any time during or after the negotiation and execution of the new On-Airport Rental Car Operations and Lease Agreements, for On-Airport Rental Car operations at the Consolidated Rental Car Garage for the then remaining portion of the term of ten (10) years from commencement of On-Airport Rental Car operations at the Consolidated Rental Car Garage, and a 15 year renewal period, subject to mutual agreement of the City and the rental car companies.
- (d) Adoption of a resolution imposing a customer facilities and transportation fee (CFC) of \$10.00 per rental car contract effective January 1, 2008, for customers renting vehicles from On-Airport Rental Car Companies, for the purpose of paying the costs of the financing, design, construction and operation of the new Consolidated Rental Car Garage and the costs of an Airport-mandated common use transportation system operated for the movement of passengers between the terminals and the existing rental car center, and repealing Resolution No. 69512, effective January 1, 2008.
- (e) Adoption of a resolution imposing a customer facilities and transportation fee (CFC) of \$5.00 per rental car contract for rental car customers renting vehicles from off-Airport rental car companies at the Norman Y. Mineta San José International Airport effective January 1, 2008 until the opening of the Consolidated Rental Car Garage, for the purpose of paying the costs of an Airport-mandated common use transportation system operated for the movement of passengers between the terminals and the existing rental car center.
- (f) Adoption of the following Appropriation Ordinance Amendments in the Airport Revenue Bond Improvement Fund:
  - (1) Increase the Consolidated Rental Car Facility appropriation by \$109,000,000;
  - (2) Increase the Public Parking Garage appropriation by \$2,442,000;
  - (3) Decrease the Terminal Area Development, Phase I appropriation by \$2,442,000;
  - (4) Decrease the Ending Fund Balance by \$109,000,000.

CEQA: Resolution Nos. 67380 and 71451, PP 06-137.

**OUTCOME**

Approval of the requested actions will provide the budgetary, contractual, and revenue collection authority necessary to increase the size and scope of the Consolidated Rental Car Garage (Rental

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Car Facility) project element in the Airport's Terminal Area Improvement Program (TAIP). The larger Rental Car Facility will realize the vision of providing a convenient and competitive Airport rental car experience. It will accommodate all the on-Airport rental car companies in a fair, competitive, and efficient facility. Passengers will be afforded a choice of companies at competitive prices with a high level of customer service. Specifically, the actions will authorize the City to collect the revenue necessary for the Rental Car Facility, amend the Design-Build Contract to deliver it, and enter into lease agreements with the rental car companies to occupy it.

Approval of the requested actions will also make adjustments to the Design-Build Contract so that it can be more responsive to changes in program scope, schedule and budget challenges that have developed since it was approved almost one year ago.

### **EXECUTIVE SUMMARY**

The TAIP approved by Council in November 2005 included a \$128.5 million budget to construct a Rental Car Facility across Terminal Drive from Terminal B. This location was selected in order to provide a high level of customer service and convenience. The Rental Car Facility includes ready-return and vehicle storage spaces, an adjacent maintenance facility, customer service lobby and counters, and rental car company offices.

The current budget would fund 1,200 spaces, the customer service lobby and counters, and rental car company offices, but not the adjacent maintenance facility. Over the past year, staff has worked in close collaboration with the On-Airport rental car companies to develop the program requirements for the Rental Car Facility. We have agreed that it should contain 3,000 vehicle spaces along with the other amenities in order to provide a convenient and competitive Airport rental car experience that enables the rental car industry to succeed. The budget required to implement this larger Rental Car Facility is \$237.5 million.

Public parking in close proximity to the Terminals is a very valued customer service and revenue asset for an airport. Developing the ground floor of the Rental Car Facility as public parking would provide 350 valuable, close-in spaces. This requires an additional \$13.5 million for a total project budget need of \$251 million.

The Rental Car Facility will be funded by the existing commercial paper program. Two sources of revenue will be used to repay this debt, CFCs and facility rents. In July of this year, the Governor signed legislation that allows the City to collect additional CFC revenue. The State legislation allows the City to require On-Airport rental car companies to collect a CFC of \$10 per transaction to support the new Rental Car Facility and a common-use transportation system for On-Airport rental car companies. The State legislation also allows the City to require Off-Airport rental car companies whose customers are required to use the common-use transportation system to collect a CFC per transaction proportionate to the cost of the common-use transportation system. Staff therefore recommends that the CFC for Off-Airport rental car companies be set at \$5.00 per transaction. Staff recommends Council authorization to collect the revised CFCs beginning January 1, 2008.

In May and June of this year, the eight On-Airport Rental Car Companies signed Letters of Intent that set out the basic terms of new On-Airport Rental Car Operations Agreements and Leases, including the payment of facility rent to support the larger Rental Car Facility. The facility rent will pay the difference between the total debt service for the Rental Car Facility and transportation costs, and the CFC contribution.

These two sources of revenue will enable the City to increase the Rental Car Facility budget by \$109 million. A program reserve release of \$13.5 million will fund the ground floor public parking. This results in a total new budget of \$251 million; the budget needed to deliver the larger Rental Car Facility.

Staff recommends amending the Design-Build Contract to deliver the larger Rental Car Facility. The current contract amount for the Rental Car Facility project element is approximately \$101.6 million. The subject Council action will authorize the City Manager to negotiate and execute an amendment in the amount of approximately \$105.3 million. The City Manager is also in the process of executing two change orders to add program reserve to the Design-Build Contract, as authorized by Council. These change orders total \$21.1 million. Together, these three amendments will increase the Rental Car Facility program element amount in the Design-Build Contract to \$228 million. This amount includes design, construction, and profit. The remainder of the \$251 million budget funds City project delivery and other costs. Once the two program reserve change orders and the proposed first amendment are executed, the total Design-Build Contract amount will increase to \$639.1 million.

The larger Rental Car Facility may require more time for design and construction. Staff recommends authorizing an extension of up to 18 months to the Project Element Completion deadline for the Rental Car Facility in the Design-Build Contract.

New operations agreements and leases will be required for the On-Airport Rental Car Companies to occupy and operate out of the new Rental Car Facility. Basic terms for the new On-Airport Rental Car Operations Agreement and Lease include a 10-year term; collection of concession fees based on rental car revenue, ground rent and facility rent; compliance with all City policies, including the Living Wage Policy; allocation of space; and terms for the operation and maintenance of the Rental Car Facility. Upon completion of the initial 10-year term, the City and the rental car companies would have the ability to extend the On-Airport Rental Car Operations Agreement and Lease for an additional 15-year term, subject to the mutual agreement of the City and the Rental Car Companies.

Staff recommends several actions to adjust the Design-Build Contract to reflect the current program and provide flexibility in its implementation. As previously reported to Council, program costs were adjusted based on the results of a program revalidation effort undertaken with Hensel Phelps to ensure all the Project Elements were in budget. As a result of this effort, the Public Parking Garage was deferred and most of its budget was spread over the remaining elements. This requires a cleanup action to redistribute the fixed total profit among the project elements listed in the contract. This redistribution does not add cost to the project nor does it increase Hensel Phelps' overall profit.

Unused contingency for a project element cannot be reallocated within the Design-Build Contract until the element is complete. Staff recommends modifying the Design-Build Contract to allow reallocation prior to a project element's completion. This will provide staff with management flexibility to maximize the scope of work within the authorized contract.

This report also informs the Council of staff's approach to project elements that have long lead times associated with them. Two options are discussed; the Precursor Guaranteed Maximum Price (GMP) approach and the Pre-purchase approach.

## **BACKGROUND**

### **Rental Car Facility**

Key Airport stakeholders convened in the Fall of 2005 to adjust the scope of the Airport Master Plan Program. They established that a major goal of the Program would be to provide a high level of customer service and convenience for the rental car customer. Accomplishing this goal would provide a competitive advantage for the Airport. The rental car experience is a very significant component of many visitors' first impression of San José, particularly for business travelers. The present rental car operation at the Airport is extremely inefficient for the rental car companies. The rental car center has only 1,200 vehicle "ready-return" spaces, the area where customers pick up and drop off rental cars. The "quick turnaround" (QTA), where vehicles are cleaned, fueled, and maintained, is located separately from the ready-return area. This is operationally inefficient and creates customer service difficulties for the rental car companies. The lack of sufficient capacity and inefficient operations also contributes significantly to Airport roadway congestion. The remote location of the present rental car operation also creates customer service challenges.

For these reasons the Master Plan Amendment approved by Council in June 2006, includes a new Rental Car Facility located conveniently across from Terminal B on the existing short-term parking lot for Terminal C (aka Red Lot). The TAIP includes a budget of \$128.5 million for the new facility, derived from Customer Rental Car Facility Charges that the City is allowed to impose on rental car companies pursuant to 1999 State legislation and an annual contribution from the rental car companies.

On October 17, 2006, Council approved the Design-Build Contract with Hensel Phelps Construction Co. for the design and construction of the Airport TAIP, including the Rental Car Facility.

Staff and the Hensel Phelps design team worked in close collaboration with the rental car companies to develop the program needs for the Rental Car Facility. This collaborative effort determined that the Rental Car Facility should include approximately 3,000 vehicle spaces, an integrated, multi-floor QTA, rental car customer service counters and rental car company offices. The current \$128.5 million budget can only fund a 1,200 space garage, the customer service counters and offices, but not the QTA. The Airport would have to limit the number of companies that would occupy this size facility.

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Staff estimates that completing the larger Rental Car Facility would cost \$237.5 million. Of the 3,000 spaces, up to 2,000 would be ready-return spaces (as specified in the Airport Master Plan) and the remainder designated for vehicle storage. Rental car companies would continue to utilize sites for additional vehicle storage either on or off-Airport.

As reported to Council in June 2007, the Hensel Phelps design effort on the Rental Car Facility had reached a critical decision point. The City was required to define the scope of the project in order to continue with design or issue a moratorium on the design effort. Various options were analyzed and risks assessed. Staff directed Hensel Phelps to proceed to 30% design on the larger Rental Car Facility, because it was the lowest risk option considering the probability of obtaining increased funding. As reported, the proposed larger project also includes 350 ground level public parking spaces.

As approved by Council in January 2007, the expanded Commercial Paper Program will provide the funding for the Rental Car Facility.

### CFC

In January, 2007 the City Council authorized City sponsored state legislation to repeal the state law provision applicable to rental car CFCs at the Airport to allow San José to take advantage of certain provisions in the state law generally applicable to rental car CFCs at other California airports. Under the existing CFC legislation applicable to San José only, the City could not collect CFCs for the new Rental Car Facility until the Rental Car Facility was finished and occupied by the rental car companies. In addition, the maximum amount of CFCs that could be collected was \$155 Million and it could only be collected for a 20 year period. The new legislation, signed into law by the Governor in July, 2007, permits collection of CFCs starting on the January 1, 2008 effective date, approximately 2.5 years earlier than provided in the existing legislation. In addition, there is no cap on the time permitted for CFC collection, allowing a longer term for amortization of the debt.

### Rental Car Agreements

In conjunction with the Rental Car Facility programming efforts, staff has been negotiating operating and lease agreement terms with the rental car companies. By early June 2007, all eight rental car companies currently holding leases and operating "on-airport" had executed non-binding Letters of Intent (LOIs) to occupy the Rental Car Facility. The LOIs include a commitment deposit of \$50,000 for companies with yearly gross revenues greater than \$8 million and \$25,000 for companies with revenue less than \$8 million. The City will retain a rental car company's commitment deposit in the event that the company fails to execute the new On-Airport Rental Car Operations Agreement and Lease on substantially the same terms as provided in the LOI.

Briefly, the LOI describes that the lease term will be 10-years and that the companies will pay a percentage of gross income, ground rent, and facility rent. The facility rent will pay the difference between the total payment on the debt and the CFC contribution. More detail on the

terms and conditions of the proposed new On-Airport Rental Car Operations Agreement and Lease is provided in the Analysis section below.

### Design Build Contract

The Design-Build Contract approved by Council includes a maximum compensation of \$512,771,000 for Hensel Phelps for the TAIP. The major Project Elements included in the TAIP are described below:

- Modifications to Terminal A
- Complete design of Terminal B
- Construction of Terminal B - Phase 1
- Construction of Temporary Terminal C
- Demolition of Terminal C
- New public parking garage
- New rental car garage
- New roads and bridges
- Terminal A inline baggage screening system and building
- Furniture, fixtures, equipment and signage for the North Concourse building

All of these Project Elements are in conformance with the Master Plan amendment approved by the City Council on June 13, 2006.

The Design-Build Contract requires execution of task orders to direct Hensel Phelps to design and construct the various Project Elements. Design task orders may be issued on either a lump sum or a "not to exceed" time and materials basis, task orders to complete the design and construct all or a portion of a Project Element may be issued on a GMP basis, and the Design-Build Contract sets a fixed fee for Hensel Phelps. Key contract terms for the original contract are further detailed in the Attachment A.

As reported to Council in February 2007, the program underwent a project-by-project revalidation effort to close a \$150 million budget gap in the various Project Elements. That effort significantly reduced the gap between the approved budget and the estimated cost to complete the scope of work in the design-build contract, but it required the deferral of the proposed Public Parking Garage. Generally, the parking garage funds were shifted to other essential Project Elements and the scopes of the Project Elements were adjusted to match the budget.

## ANALYSIS

### Larger Rental Car Facility

Staff recommends constructing the larger Rental Car Facility at the Airport. The Airport stakeholders that convened in the Fall of 2005 to adjust the scope of the Airport Master Plan Program established a major goal of providing a high level of customer service and convenience for the rental car customer. Accomplishing this goal would provide a competitive advantage for the Airport. The rental car experience is very significant component of many visitors' first impression of San Jose, particularly for business travelers. For these reasons, the proposed Rental Car Facility was sited within the terminal area across from Terminal B.

The program and budget of the Rental Car Facility needs to be increased to realize the vision established by the Airport Stakeholders and supported by the Council. The larger Rental Car Facility will contain enough space to allow all current On-Airport Rental Car Companies to occupy the facility in a fair and competitive environment and meet forecast demand through 2017. It will feature an adjacent multi-floor QTA that will allow the rental car companies to operate at a high level of efficiency and contain most of their traffic within the facility. Rental car consumers will benefit from having a choice of companies near the terminals. Airport roads will benefit from less traffic.

Deferring the Public Parking Garage entirely potentially impacts the ability to provide public parking in close proximity to the Terminals. Close-in parking is both a valued customer service as well as economic asset. The ground floor of the Rental Car Facility provides an opportunity to provide 350 of these valuable close-in parking spaces for some close-in public parking, particularly to serve the "hourly" or "meter/greeter" type parker, as well as disabled parkers. These spaces require an additional budget of \$13.5 million, resulting in a total project budget need of \$251 million for the Rental Car Facility.

The following table summarizes the budget increases necessary to fund the larger Rental Car Facility:

#### New Budget Proposal

Original budget	\$128.5 million
Additional CFCs and facility rent	109.0
Program reserve (Public Parking)	13.5
<b>Total</b>	<b>\$251.0 million</b>

The additional CFC collection authority granted by the State and the facility rents included in the proposed On-Airport Rental Car Operations and Lease Agreements will support increased funding for the Rental Car Facility. (These revenues are described in more detail below). Staff analysis has determined that these revenue streams will allow the Commercial Paper Program to provide an additional \$109.0 million in funding to the project. A total of \$ 105.3 million will be used for the Design-Build Contract with the remainder used for City costs.

A total of \$13.5 million will be allocated from the Public Parking Program Reserve to fund the 350 ground floor public parking spaces. This budget amount includes \$12.0 million for the Design-Build Contract with the remainder used for City costs. Staff recommends Council authorize increasing the Public Parking Garage appropriation (Funds 527 & 554) by \$2,442,000 to bring the total budget to the Program Reserve release amount of \$13,500,000. The current year budget is \$7,525,000, and \$3,533,000 has been expensed as of June 30, 2007.

The \$128.5 million original budget for the Rental Car Facility included a program reserve of \$11.7 million. This amount will be released back to the project. The budget amount includes \$8.8 million for the Design-Build Contract with the remainder used for City costs.

Design-Build Contract Change Orders

This section describes the change orders necessary for the Design-Build Contract to deliver the larger Rental Car Facility. The Design Build Contract currently includes the amount of \$101,596,563 for the Rental Car Facility Project Element.

Council authorized the City Manager to amend the Design-Build Contract for program reserve releases at the time the Design-Build Contract was approved. Two City Manager authorized change orders to add program reserve to the total compensation under the Design-Build Contract are in progress for the Rental Car Facility. One change order will be in the approximate amount of \$8.8 million for the Rental Car Facility program reserve release. The second change order will be in the approximate amount of \$12.0 million for the Public Parking program reserve release.

Staff is recommending Council authorize the City Manager to negotiate and execute the First Amendment to the Design-Build Contract in the amount of \$ 105,273,000.

The Design-Build Contract amount for the Rental Car Facility will total \$227,950,000 upon execution of the proposed amendments as summarized below:

Proposed Hensel Phelps Contract Amendments for the Rental Car Facility

Original award	\$101,596,563
First Amendment	105,273,314
Program Reserve Release (Rental Car Facility)	8,819,865
Program Reserve Release (Public Parking)	12,260,258
<b>Total</b>	<b>\$227,950,000</b>

This amount includes global services, design, construction, Hensel Phelps profit and City controlled contingency. The remainder of the \$251 million budget, or \$23,050,000, is the project budget for City costs, including Owner Controlled Insurance Program, program management, project management, City furnished equipment, and overhead.

As discussed below, staff is currently negotiating On-Airport Rental Car Operating and Lease Agreements with the rental car companies and recommends that the City Manager be authorized to negotiate and execute the agreements. Staff will not execute Task Orders with Hensel Phelps for the construction of the expanded Rental Car Facility until rental car companies representing at least 75% of the On-Airport market share execute the new On-Airport Rental Car Operating and Lease Agreements. If the City cannot agree to terms with rental car companies representing at least 75% of market share, the Garage will be scaled back to match the revenue available to pay for the financing of the garage.

The larger Rental Car Facility may require more time for design and construction. Currently, the Design-Build Contract includes a Project Element Acceptance Deadline of second quarter of 2010 for the Rental Car Facility. Authority is requested to negotiate up to an 18-month extension to this deadline. Staff will report the negotiated deadline back to Council via information memo.

#### Rental Car Customer Facilities and Transportation Fee

Staff recommends Council authorize the collection of rental car CFCs, effective January 1, 2008, in accordance with the recently signed State legislation. Staff estimates that the proposed CFC increase will generate approximately \$116 million in additional CFC revenue that will be applied toward repayment of the Rental Car Facility financing costs.

Beginning on January 1, 2008, staff recommends that the City require the On-Airport Rental Car Companies to collect a \$10.00 per rental car contract CFC from customers renting vehicles from On-Airport Rental Car Companies. This revenue will be applied, in part, to pay the costs of the financing, design, construction and operation of the new Rental Car Facility. From January 1, 2008 until completion and occupancy of the Rental Car Facility, \$5.00 of this \$10.00 collected per contract will be used to pay the costs of the Airport-mandated common use transportation system operated for the movement of On-Airport Rental Car Company passengers between the terminals and the existing rental car center, in accordance with the terms of the existing rental car agreements. Upon commencement of operations at the new Rental Car Facility, the City will apply the CFCs collected from On-Airport Rental Car Companies toward payment of debt service and the City's actual costs related to the financing of the capital used to fund the development of the Rental Car Facility. In addition, a portion of CFCs collected from passengers arriving or departing from Terminal A, who will be required to use a common use transportation system for transportation between Terminal A and the Rental Car Facility, may be used toward common use transportation costs.

The City will also collect \$5.00 per rental car contract for customers renting vehicles from Off-Airport Rental Car companies at the Airport effective January 1, 2008 until the Rental Car Facility is finished and occupied by the rental car companies, for the purpose of paying the costs of the Airport-mandated common use transportation system operated for the movement of Off-Airport Rental Car Company passengers between the terminals and the existing rental car center.

On-Airport Rental Car Operations and Lease Agreements

Staff recommends authorizing the City Manager to negotiate and execute operations and lease Agreements with the current On-Airport Rental Car Companies.

The LOI executed in May and June 2007 outlines the business terms for an On-Airport Rental Car Operations and Lease Agreement with the eight rental car companies currently operating at the Airport. Basic business terms for the Agreement will be as follows:

- The term will be for 10 years, and the companies will pay the City their pro-rata share of ground rent on a per square foot basis, for the footprint of the facility, allocated among all the companies according to a formula to be determined by the City. The rental rate will be determined by the City based upon the fair market rental value of the land. Ground rental rate will be adjusted annually based upon the change in the Consumer Price Index compared to the previous year. Every five years, the land will be reappraised and the ground rent will be adjusted accordingly. In no event will the ground rental rate decrease. The ground rent is separate and apart from the Rental Car Facility rent, which is discussed below.
- In addition to ground rent and Rental Car Facility rent, the rental car companies will pay the City a concession fee based on their gross revenues, with a Minimum Annual Guarantee ("MAG") to be established on an annual basis. The first year's MAG will be set at 85% of the concession fees actually paid for the prior year. Any new entrants not currently operating on-airport will have an initial MAG set at \$100,000, which the MAG for subsequent years set at 85% of the concession fees actually paid for the prior year.
- Companies will be required to form a consortium to hire a third party, acceptable to the City, to operate and maintain the common use areas of the Rental Car Facility and the Rental Car Facility fueling system, in accordance with Airport standards.
- Companies will be entitled to an initial allocation of the following types of space in the Rental Car Facility:
  - Customer service building counter and administrative office, by lineal foot.
  - Ready return space, by square footage.
  - QTA space, by number of fuel nozzles, by number of wash/maintenance bays, by square footage for vehicle queuing space.
- Initial allocation of space will be determined based upon each company's market share to the fullest extent possible, taking into consideration operational and physical efficiencies in the Rental Car Facility design and operation of the total Rental Car Facility. The City shall have final approval on the allocation of all space in the Rental Car Facility. Companies with less than a 2% market share will be allocated the square footage equivalent of 60 ready return spaces and 8 lineal feet of counter and administrative office space. These smaller companies need this minimum amount of space, which they would not receive under a market share only approach, to effectively run their businesses. There

will remain sufficient space to accommodate additional small market share rental car companies that may wish to operate On-Airport in the future.

- Companies will be required to comply with all City contracting requirements and policies, which include, but are not limited to the City's Living Wage Policy, the City's Airport Concession Disadvantaged Business Enterprise Policy and Prevailing Wage requirements for any improvements constructed in the Rental Car Facility by the Companies.
- Companies are responsible for on-going costs of operating, maintaining and repairing the common use portions of the Rental Car Facility, as well as for their individual exclusive use areas. Common use operating and maintenance costs are allocated among the companies according to a formula developed by their consortium.
- Companies will have the right to review the Rental Car Facility scope and GMP once received by the City. If the GMP price exceeds \$237.5 million for the rental car portion of the garage or the scope is materially different from the scope describe in the LOI, the City and the rental car companies will work to resolve the issues. If a mutually acceptable agreement regarding the Rental Car Facility scope and GMP cannot be reached, the Agreement will terminate. At that time, the City can negotiate a new agreement with the rental car companies for a reduced scope or identify new uses and funding for the Rental Car Facility.

The City does not intend to limit the number of qualified rental car companies who can operate in the Rental Car Facility. In the event any new On-Airport Rental Car Company wants to operate in the Rental Car Facility, that company would be offered the same agreement as those companies currently operating at the Airport, for the then remaining portion of the 10-year term. The Agreements will provide for one 15-year renewal period, subject to the mutual agreement of the City and the rental car companies.

Upon commencement of operations at the new Facility, the City will apply the CFCs collected from On-Airport Rental Car Companies first toward payment of debt service and the City's actual costs related to the financing of the capital used to fund the development of the Rental Car Facility, and second, toward common use transportation costs. Because the new Facility will be located near Terminal B, only those Rental Car customers arriving or departing from Terminal A will be required to use a common use transportation system to and from the Facility. Therefore, in the event that any portion of CFC collections is available to pay common use transportation costs during the term, such transportation costs may only be paid from CFCs collected by On-Airport Rental Car Companies from customers arriving or departing from Terminal A. Based upon current rental car transaction forecasts, it is anticipated the CFCs will not be sufficient to pay debt service and common use transportation costs during the term. Therefore, participating rental car companies will pay annual facility rent to the City for the term. Rental Car Facility rent will be equal to total annual debt service costs less total annual rental CFCs collected. Rental Car Facility rent will be apportioned among the companies operating in the Rental Car Facility according to the amount of exclusive use space allocated to each company, as a percentage of the total exclusive use space in the Rental Car Facility. It is estimated the total

facility rent will be approximately \$4.8 million per year; however, this figure will vary, depending on the CFCs collected. In the event CFC collections are higher than estimated, the total facility rent will be lower than the estimated \$4.8 million per year. If the CFC collections are lower than estimated, the total facility rent will be higher than the estimated \$4.8 million per year. Rental Car Facility rent over a 25 year period would generate approximately \$121 million, which along with the CFCs would be sufficient to repay the debt associated with the Rental Car Facility

When the Rental Car Facility opens, the City, or a third party operator contracted by the City, will operate and maintain an inter-terminal shuttle system which may also be used by rental car customers arriving or departing from Terminal A. To the extent CFC revenues collected from rental car customers arriving or departing from Terminal A are not sufficient to cover common transportation system costs, the rental car companies will pay the City a pro-rata share of the shuttle system annual costs based upon the share of rental car customers using the system compared to total ridership

The new CFC legislation permits collection of CFCs so long as the Rental Car Facility debt is outstanding. It is anticipated the fees will be collected for a 25 year amortization period. The initial term of the new On-Airport Rental Car Operations and Lease Agreements is 10 years. While it is expected that the City and the Rental Car Companies will agree that the term of these Agreements will be extended when the original 10 year term expires, should the City or the On-Airport Rental Car Companies determine at the expiration of the 10-year term not to extend the Agreements, the City cannot continue to collect CFCs after the On-Airport Rental Car Companies vacate the Rental Car Facility, and the City will be responsible for payment of the remaining debt service for the Rental Car Facility from other Airport funds.

#### Proposed First Amendment to Hensel Phelps Contract

##### Fee Redistribution

The total value of the Hensel Phelps Design-Build Contract after the revalidation effort reported to Council in February 2007 remains at \$512.8 million. The fee to deliver these projects was negotiated at \$34 million and incorporated in the Design-Build Contract as Appendices 4A and 4B. Of that amount, \$8 million was for global services, which includes program management and design oversight, and distributed evenly over the life of the Design-Build Contract. The remaining \$26 million was associated with the actual design and construction of the program and was distributed over the various Project Elements. With the deferral of the Public Parking Garage and the subsequent redistribution of that funding, the \$26 million in fee must be redistributed as well. The proposed First Amendment to the Design-Build Contract redistributes the fee among the revised Project Elements on a pro-rata basis. This action does not have a cost associated with it. However, as discussed previously in this memorandum, Hensel Phelps will receive additional fees associated with the larger Rental Car Facility. Per the terms of the Design-Build Contract, these fees will not exceed 5.73% of the amount of the change.

### Use of Unused Contingencies

The current contract with Hensel Phelps provides for the use of unused contingency funds, however the contract provision related to the reuse of unused contingency funds requires that all work be completed on a particular Project Element before the contingency funds can be returned to the program for reallocation to other Project Elements, or be split 75%/25% between the City and Hensel Phelps.

Staff recommends modifying the contract to allow the release of any unused funds from a Project Element or Sub-element as quickly as possible rather than holding those funds until all of the work associated with that particular Project Element is completed. This will allow money to be utilized to achieve greater scope in those Project Elements that have not entered the construction phase. This contract change would identify three different cases when monies could be moved:

- At the completion of a Sub-element construction phase.
- Prior to the completion of a Sub-element or Project Element construction phase.
- As the contract currently contemplates, at the completion of the overall Project Element.

The latter event is the time at which the unused contingency (project savings) would be split between the City and Hensel Phelps respectively on a 75%/25% basis.

### Precursor GMP and Pre-purchase of Long Lead Time Items

In order to protect the project budget from escalation due to schedule extensions for long lead time items, staff is proceeding with the concept of precursor GMPs. For example, the steel for Terminal B will require six to nine months to fabricate once an order is placed. In order to mitigate the schedule extension caused by the long lead time for the steel, staff is negotiating a GMP task order to design and construct the foundations and erect the steel for Terminal B.

As a result, some of the ability for the City to utilize the exit strategy under the contract is limited. The contract allows the City to publicly bid and award a project element should the City and Hensel Phelps, be unable to reach agreement on a GMP for a project element. The City still would be able to proceed with a public bid and award of the remaining elements of work in Terminal B, however the timing of the steel construction would likely result in delays and increased cost.

As an alternative to the precursor GMP, the City may choose to purchase long lead time items through Hensel Phelps but not agree to the installation or construction with the Pre-purchased items. This approach has the advantage of allowing the City to choose the exit strategy option and provide the steel to the low bid contractor as City furnished material. This would eliminate the potential delay identified under the precursor GMP option. The proposed First Amendment to the Design-Build Contract would allow the City and Hensel Phelps to execute a Task Order for the pre-purchase of materials that the parties identify as having long lead times. In the event that the City and Hensel Phelps are ultimately unable to agree upon the terms of a GMP Design-Build Task Order that incorporates that pre-purchased material, the City would take possession

of the pre-purchased material and provide the material to the low-bid contractor that ultimately constructs the Project Element. Staff will evaluate the status of the design process and GMP negotiations for the Project Element prior to deciding whether to choose the Pre-purchase option or the precursor GMP option.

### EVALUATION AND FOLLOW UP

Status of the Rental Car Facility, including performance measurement, is reported to Council in the Airport Capital Improvement Program Quarterly Report.

Staff has identified other projects related to the TAIP that may be most effectively and efficiently delivered under the Design-Build Contract. Staff is performing the analysis of these opportunities and may recommend another Design-Build Contract amendment to the Council.

### PUBLIC OUTREACH/INTEREST

- ✓ Criterion 1: Requires Council action on the use of public funds equal to \$1 million or greater; **(Required: Website Posting)**
- Criterion 2: Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3: Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Extensive public outreach was performed during the preparation of the RFP. Parties engaged were likely design-build proposers and sub-design-builders, designers and businesses that could contribute to the project. All public outreach that took place during the preparation of the RFP was conducted in public outreach meetings that were open to all interested participants.

Since the contract was awarded the project has been presented to the Small Business Development Commission, staff and Hensel Phelps have attended two procurement fairs for subcontractors and a subcontracting website has been developed. The website address is <http://www.sjctaip-opportunities.com/>.

### COORDINATION

This memorandum has been coordinated with the Departments of Finance, Office of Economic Development, and the City Attorney's Office.

**FISCAL/POLICY ALIGNMENT**

The San José Municipal Code requires that capital projects at the Airport be consistent with the adopted Airport Master Plan. As the Rental Car Facility is expressly identified in the Master Plan (Project "T-14"), the proposed actions would be consistent with the adopted Airport Master Plan pursuant to Municipal Code Section 25.04.210(B)(2).

This project is consistent with the Guiding Principals for Budget and Financial Management, Mayor's 2006-2007 Revised June Budget Message, in that it supports economic recovery and job creation.

**COST SUMMARY/IMPLICATIONS**

On June 13, 2006, Council approved an Amendment to the Airport Master Plan to allow for approximately \$1.5 billion in improvements that will be constructed through the year 2017. The additional cost associated with a larger Rental Car Facility consists of \$105,274,000 to be added to the Hensel Phelps contract for design and construction and \$3,726,000 for insurance, program management, project management, technology and overhead. This is consistent with the program that Council approved. This action will accelerate amounts budgeted in future fiscal years and will not increase the total budget in the 5 year Capital Improvement Plan by \$109,000,000. Additional future appropriation actions may be necessary to continue the design-build effort dependent upon the schedule established by Hensel Phelps.

**1. AMOUNT OF RECOMMENDATION/COST OF PROJECT:**

	<b>Total Project</b>
Project Delivery	\$ 23,050,000
Program Reserve	\$ 0
Contingency	\$ 0
Master Agreement Amount	<u>\$227,950,000</u>
<b>TOTAL PROJECT COSTS</b>	<b>\$251,000,000</b>
Prior Year Expenditures	\$ 16,838,000
<b>REMAINING PROJECT COSTS</b>	<b>\$ 234,162,000</b>

**2. COST ELEMENTS OF AGREEMENT/CONTRACT BY APPROPRIATION:**

Consolidated Rental Car Garage (Fund 526(528))	\$237,500,000
Public Parking Garage (Fund 526(554))	\$ 13,150,000
Public Parking Garage (Fund 527)	<u>\$ 350,000</u>
<b>TOTAL AGREEMENT AMENDMENT AMOUNT</b>	<b>\$251,000,000</b>

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3. **SOURCE OF FUNDING:** 527 – Airport Renewal and Replacement Fund  
526 – Airport Revenue Bond Improvement Fund,  
Commercial paper is being used as an interim source of funding, as approved by Council on June 20, 2006.
  
4. **FISCAL IMPACT:** The project has been reviewed and it was determined that it will have no significant adverse impact on the General Fund operating budget. Additional operating costs will be paid for in the Airport Operating and Maintenance Fund.

**BUDGET REFERENCE**

The table below identifies the fund and appropriations proposed to fund the contract amendment recommended as part of this memo and remaining project costs, including project delivery construction and contingency costs.

Fund #	Appn #	Appn. Name	Total Appn	2007-2008 Proposed Budget Page*	Last Budget Action (Date, Ord. No.)
<b>Remaining Project Costs:</b>			<b>\$234,162,000</b>		
<b>Current Funding Available:</b>					
526 (528)	4164	Consolidated Rental Car Facility	\$113,582,000	V-756	6/19/07 Ord. No. 28071
526 (554)	5246	Public Parking Garage	\$7,525,000	V-727	6/19/07 Ord. No. 28071
<b>Total Current Funding Available:</b>			<b>\$121,107,000</b>		
<b>Additional Funding Recommended:</b>					
526	8999	Ending Fund Balance	\$109,000,000		
526	5246	Terminal Area Improvement Program, Phase I	\$2,442,000		
526 (528)	4164	Consolidated Rental Car Facility	(\$1,314,000)**		
<b>Total Additional Funding Recommended:</b>			<b>\$110,128,000</b>		
<b>Funding in Future Years:</b>					
526 (528)	4164	Consolidated Rental Car Facility	\$2,000,000		
526	4164	Consolidated	\$1,000,000		

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(528)	Rental Car Facility			
<b>Total Funding in Future Years:</b>		<b>\$3,000,000</b>		
<b>Total Funding for Project:</b>		<b>\$234,235,000</b>		

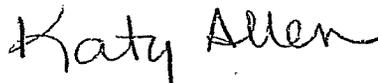
\* The 2007-2008 Adopted Capital Budget was approved by the City Council on June 19, 2007.

\*\* This adjustment will be recommended for Council consideration as part of the 2006-2007 Annual Report.

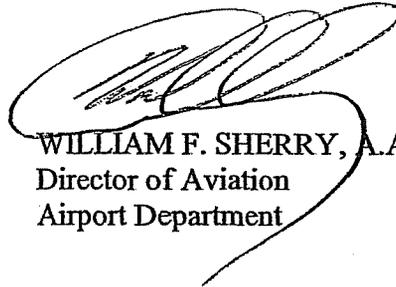
Services performed by Hensel Phelps under this agreement will be authorized by Task Order. An appropriation is not required for execution of the Master Agreement, but is required for each Task Order authorized under this agreement.

CEQA

CEQA: Resolution Nos. 67380 and 71451, PP 07-163.



KATY ALLEN  
Director, Public Works Department



WILLIAM F. SHERRY, A.A.E.  
Director of Aviation  
Airport Department



LARRY LISENBEE  
Budget Director

For questions please contact HARRY FREITAS, DEPUTY DIRECTOR, PUBLIC WORKS at (408) 535-8300.

Attachment  
HF:rlc:ncvc

## **Attachment A**

### **Original Contract Terms and Conditions**

#### Contract Terms and Conditions

In general the contract has been structured to allow the City flexibility to move elements of the project to a low bid environment if costs come in over the budget established for any project element. In addition, the contract has been structured to reduce risk of both cost escalation and indemnity. The contract fixes Hensel Phelps' profit, establishes change order process, and provides a framework for dispute resolution. Key elements of the contract are as follows:

1. GMP – The GMP contract allows the City to negotiate a time and materials (not to exceed) cost for the design of a project element up to the 30% design level. Should the design-builder and the City agree to a GMP at this point the project would proceed with final design and construction. Should the parties not agree the process would be repeated at 60% design and 100% design. If the parties do not agree at 100% design to a GMP the City may, at its discretion, publicly bid and award that element of work.
2. Contingencies - There are two contingencies available for unexpected conditions. The contract contains a "Design-Builder Contingency" to cover unforeseen/unforeseeable cost that neither the architect/engineer nor the contractor could predict when the GMP was established. The use of these contingency funds is controlled by the design-builder, but will be monitored by the City pursuant to the terms of the contract. In addition, the contract provides for a City controlled contingency to cover costs arising from the unforeseen issues arising during the Project that are not within the control or responsibility of Hensel Phelps, such as differing site conditions, force majeure events and change order work necessary to construct the project. Expenditure of the City controlled contingency will require a change order to be negotiated and executed by the City Manager. Any cost in excess of the GMP and Design-Builder Contingency that are not eligible for a City controlled contingency are the responsibility of the Design-Builder.
3. Contract Change Orders – In general, should unexpected conditions be encountered and a contract change order be issued by the City, Hensel Phelps will be entitled to extended overhead charges and additional working days. However the Contractor will be responsible for the first \$150,000 of cost incurred for differing site conditions per occurrence.

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4. Liquidated Damages - The Contract contains liquidated damage provisions should the completion date for specified project elements be late. The liquidated damages vary by project element and range from \$6,000 to \$28,500 per day and are capped at a maximum of 90 days. The maximum liquidate damages penalty the City can assess is \$9.9 million.
5. Incentives - Incentives for early completion of the work are capped at 25% of the liquidated damages for a project element up to a maximum of 90 days. If all of the project elements are completed 90 days ahead of schedule the maximum incentive the contractor will receive is \$2.475 million.
6. Shared Savings -- The contract contains provisions for cost savings to be shared between the City and the Hensel Phelps. Should the GMP for any project element be negotiated for a value that is lower cost than the budgeted amount for that project element the full amount of any such savings would immediately revert to the City. Should the actual cost to complete a project element be less than the GMP, inclusive of the design-builders contingency, the savings will be pooled for use in the event another project element costs more than the budgeted amount. Upon completion of all project elements, the cost savings for the program will be shared with 75% to the City and 25% to Hensel Phelps.
7. Profit - Hensel Phelps' profit is a fixed fee of \$34 million for the entire 3-1/2 year duration of the Terminal Area Improvements Program. The fixed fee can increase, but only in limited situations. The first is a change order resulting from a City-directed change or a City-caused delay. The second is a change order that draws upon program reserves to increase the scope of a project element. The \$34 million fee is approximately 6½ percent of the total award amount. Staff has performed an extensive review of public contracts of this nature and determined that Hensel Phelps' profit is reasonable for the very complex and multi-phased work that Hensel Phelps will be undertaking at an operating international airport. In addition, third party consultants familiar with Hensel Phelps contracts have confirmed that the fee is within range of similar projects.
8. Dispute Resolution -- The project team will engage in a formal partnering program. In addition, a dispute resolution board will be convened for any disputes that could lead to claims or litigation.
9. Insurance Program - To provide for a comprehensive insurance program, the City and Hensel Phelps negotiated to implement an Owner Controlled Insurance Program (OCIP). The City will secure the coverage for the OCIP liability at a minimum of \$150 million for General Liability, Statutory Workers' Compensation coverage. Builders Risk for completed project value, Owners Protective Professional Indemnity

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(OPPI) and other appropriate coverages that may be needed. OPPI protects the City above and beyond the limits of professional liability provided by consultants, such as design, structural engineering, and other construction related professional services. The OCIP and Builders Risk coverages will be purchased and placed into effect prior to the beginning of any construction and/or at the time of the first contract award. The OPPI will be placed upon the completion of the conceptual design of the TAIP Building project.

Budget and Scope

The budget for the project is approximately \$663.0 million. Of that amount \$512.8 million was awarded to Hensel Phelps to design and construct the project elements described below. The remainder of this project funding authorization is for Contingency, Program Reserve, Insurance, Freestanding FF&E, IT Equipment, and Program Support.

- Contingency is to be used at the owner's discretion for things such as differing site conditions, utility conflicts, hazardous materials, and third party delay.
- Program Reserve is used for alterations in the scope of work that result from new or restated needs of one of the Airport stakeholders, such as the airlines, airport concessionaires, the Federal Aviation Administration, and the Transportation and Security Administration. Use of Contingency and Program Reserve is at the discretion of the City Manager. The use of program reserve is restricted to TAIP projects. Any use of program reserve will be reported to the City Council in quarterly financial and progress reports.
- Program Support pays for staff, outside consultants and outside contractors. Use of funds requires additional approvals in the budget process or by award of separate contracts.

The breakdown is as follows:

Construction	\$488.2 million
Contingency	24.6
Insurance, FF&E, IT Equip	30.1
Program reserve	56.0
Program support	64.1
<b>Total</b>	<b>\$663.0 million</b>

The contract awarded to Hensel Phelps in October contained the following elements:

Modifications to existing Terminal A	\$37.7 million
New Terminal B	127.8
Roadway improvements	110.9
Temporary Terminal C	5.7

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Demolition of Terminal C	8.2
Surface parking lot	3.0
Tenant relocations	0.8
<b>Total</b>	<b>\$294.1 million</b>

There are several projects that are ongoing or will become active in the near future that were not elements of the TAIP design-build program base project. They were included as optional projects in the RFP. Based on staff's assessment of improved project delivery, lower project costs or increased and more effective project coordination, the City Council approved incorporating these projects into the design-build contract. The specific work scope negotiated with the design-builder for each of these projects was based on the status of the project and the specific work effort that best supports the program schedule and budget for completion of the total Airport development program. The optional projects included in the contract are:

Consolidated rental car garage	\$101.6 million
Public parking garage	66.2
Terminal A baggage building and system	26.5
North Concourse furniture, fixtures, equipment and signs	23.0
Utilities - Feasibility	1.4
<b>Total</b>	<b>\$218.7 million</b>

The total value of the work scope negotiated for the optional projects is \$218.7 million. The total value of the TAIP Design Build Contract is \$512.8 million, which will serve the Airport's needs in 2010. This budget is consistent with the overall \$1.5 billion program outlined to Council in November 2005. The remainder of the program would be demand driven and would allow for Airport growth to the projected passenger demand in 2017.

This contract provides authority for the staff to manage all financial transactions within the approved budget. Work orders are being employed to fix the scope and cost of individual project elements. Project controls staff from both the City and Hensel Phelps are monitoring and forecasting (so as to control) the costs and schedule of the project elements. Comprehensive reports are being issued quarterly for council and public review of cost, scope and schedule.

Schedule

The schedule in the contract requires Hensel Phelps to deliver the TAIP in 42 months. Beneficial use of the final building will be by the end of the second quarter of 2010. The approved schedule allows the City to realize the full benefit of a design-build contract. These include commencement of construction before the completion of design, and concurrent design and construction of multiple project elements. Work will commence with the construction of temporary Terminal C and complete with Terminal B. Roadways will be built to support individual project elements as they come online.

Insurance

In the case of the TAIP the City and Hensel Phelps agreed to extend the City's Owner Controlled Insurance Program (OCIP) to ensure a comprehensive insurance coverage. Gallagher Construction Services will administer the OCIP with Hensel Phelps on behalf of the City. Pursuant to the first amendment to the City's agreement with Gallagher for insurance broker services, which extends the agreement with Gallagher by five years, Gallagher will administer the OCIP together with Hensel Phelps' OCIP administration. The administration of the OCIP includes but is not limited to enrolling of approved design-builders, delivering and explaining the OCIP Manual to eligible design-builders, tracking of insurance costs, administration of the Liability and Workers' Compensation claims, securing and maintaining up-to-date evidence of non-OCIP and OCIP coverage from all design-builders, and closing out the OCIP.

The extension of the OCIP (Liability/Workers' Compensation) for 6 months past the anticipated construction schedule will take into consideration any unanticipated delays in construction. Because cost is based on actual payroll reported, the extension in time would not result in any additional premium to the CITY.

In addition to the OCIP, two additional insurance policies: Builders' Risk and Owner's Protective Professional Indemnity including Contractor's Pollution Liability have been purchased to provide risk management for the Airport Master Plan Projects.

- Builders' Risk – Builders' Risk insurance covers fire, extended coverage (coverage for property damage caused by windstorm, hail, smoke, explosion, riot, riot attending a strike, civil commotion, vehicle and aircraft collision), vandalism, as well as other defined coverages subject to the construction limit of this project. Limits are to be calculated based on the proposed construction cost plus additional costs that could be incurred in the event of damage to the structures, such as demolition costs or additional design costs. The City will also extend coverage in the Builders' Risk insurance coverage to include business interruption insurance to cover the City's debt service payments to bondholders to the extent the loss occurs prior to occupancy and after exhausting the capitalized interest funded from bond proceeds.
- Owner's Protective Professional Indemnity (OPPI) including Contractor's Pollution Liability – OPPI including Contractor's Pollution Liability coverage protects the City in the event of potential damages arising from design errors and omissions and provides a source of funds for City claims against project architects and engineers. The policy applies only after the design professional's own insurance has been exhausted or does not cover the loss. Additionally, the OPPI policy affords coverage for liability arising caused by pollution conditions arising from covered operations at the project site. This policy

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will be purchased after the completion of the conceptual design of the TAIP Building project.

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