



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: William F. Sherry, A.A.E.

SUBJECT: SEE BELOW

DATE: July 28, 2008

Approved

Date

7/29/08

COUNCIL DISTRICT: City-Wide

SUBJECT: OTHER TRANSACTION AGREEMENT WITH TSA FOR THE TERMINAL A CHECKED BAGGAGE EXPLOSIVE DETECTION SYSTEM

RECOMMENDATION

Adoption of a resolution authorizing the City Manager to negotiate and execute an Other Transaction Agreement with the Transportation Security Administration (TSA), an agency of the United States Department of Homeland Security, to establish the respective obligations and other responsibilities of the City and the TSA regarding the Terminal A In-Line Checked Baggage Explosive Detection System (EDS) and to provide for funding by the TSA of ninety percent (90%) of allowable costs of the baggage screening system not to exceed a total reimbursement of \$20,300,000, for a term from the date of execution through completion and acceptance of the project.

OUTCOME

Approval of this recommendation will allow the City to receive federal funds from TSA to purchase and install the In-Line Checked Baggage EDS for Terminal A.

BACKGROUND

Since December 2006, the City has been engaged in ongoing discussions with the TSA regarding federal funding for the baggage screening systems in Terminal A and Terminal B.

In addition, over the past 19 months there have been numerous discussions between TSA and City design staff on the design of a new, fully automated baggage screening system. During the same time, the Mayor has actively advocated for federal funding for the new baggage screening system, meeting at least three times with the TSA Administrator to discuss funding opportunities.

TSA encouraged the City to pursue two federal funding options. The first option was a service agreement. Under a service agreement, the City would have entered into a signed contract with the TSA to build a turnkey baggage screening system that TSA would operate and maintain while paying a fee to reimburse the airport for the capital costs and some operating costs.

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The second option was an Other Transaction Agreement (OTA). This is one-time capital funding in partnership with City matching funds. Funds would be dispersed as reimbursement as authorized expenditures are incurred.

As design plans for the baggage screening system progressed, TSA hoped to be able to offer the City a choice between the service agreement and grant funding.

Ultimately, due to legal complications with the service agreement and the need for the Airport to keep the baggage screening system project on time and on budget, the OTA emerged as the only viable option.

Staff is now working with TSA on the OTA that will set forth the terms and conditions as well as establish respective cost sharing obligations and other responsibilities of the TSA and the City.

Construction of the system is expected to begin in the fall of 2008 with the completed baggage system for Terminal A anticipated to be functional in the fall of 2009. The OTA must be executed by late August for the City to receive funds from TSA.

ANALYSIS

The Project

The Terminal A in-line checked baggage explosive detection system (EDS) is an element of the Terminal Area Improvement Program. The system is made up of transport conveyors that pick up bags and move them to the matrix of screening machines and transport conveyors that take the screened bags from the screening matrix to equipment where the bags are staged to be put on aircraft. There are also infrastructure improvements to the building to accommodate the baggage screening system, such as electrical power and mechanical improvements. The proposed OTA will provide funding only for the baggage screening matrix portion of the system, as well as some of the associated support infrastructure improvements. The TSA will separately purchase and provide all EDS and Explosive Trace Detection (ETD) machines necessary to conduct the TSA baggage screening operations at Terminal A. The total estimated cost of the Terminal A baggage screening system is \$20.3 million, however, only \$10.4 million is eligible for reimbursement under the OTA. However, in addition, there is \$12.1 million in infrastructure costs that staff believes are eligible for reimbursement under the agreement. Combined, staff estimates that there is \$22.5 million in costs eligible for reimbursement under the agreement. The agreement would reimburse a maximum of 90% of this cost, or a total potential maximum reimbursement of \$20.3 million.

Key Agreement Provisions

The OTA provides that the TSA will retain ten percent (10%) of each payment request submitted by the City for the duration of the Project until the baggage screening system has successfully passed all testing and any defects identified in the testing have been corrected by the City. The final value of the Agreement is currently being negotiated with the TSA by staff, and is subject to TSA agreement on qualifying costs and funding availability.

The OTA is a TSA form agreement that provides that the TSA will determine the costs of the EDS Project that are reimbursable by the TSA in accordance with applicable federal cost principles. The OTA lists reimbursable project costs elements that are eligible for reimbursement, as well as those costs that are not eligible for reimbursement. The OTA also outlines the respective responsibilities of the TSA and the City in

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regard to the EDS Project, with the TSA generally responsible for reviewing and commenting on project plans and specifications, delivering, installing and testing the EDS equipment, and providing acceptance testing guidelines for the baggage screening system. All EDS and ETD security screening equipment will at all times remain the property of the TSA, and the TSA will be solely responsible to maintain, repair and refurbish the EDS and ETD units at no cost to the City. All of the TSA's obligations under the OTA are subject to continued legislative mandate and funding.

The term of the OTA will run from the date of execution through the completion and acceptance of the project. Either the TSA or the City may terminate the agreement at any time with or without cause by giving at least thirty (30) days written notice to the other party. The party terminating the OTA will not have any further liability or obligation to the terminated party, other than payment of any amounts due and owing or performance of obligations already incurred prior to the termination date.

The City is pursuing a second, separate application for funding for the baggage system for Terminal B and hopes to secure funding for that project from TSA in federal fiscal year 2008-2009.

EVALUATION AND FOLLOW UP

As described above, the estimated maximum cost reimbursement for the Terminal A Checked Baggage EDS through the Agreement is \$20.3 million. City Council approval is being requested to complete the negotiations and execute a contract with TSA to receive funding for the Terminal A baggage handling project.

POLICY ALTERNATIVES

Not applicable.

PUBLIC OUTREACH/INTEREST

- ✓ **Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. (Required: **Website Posting**)
- Criteria 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**)
- Criteria 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**)

This memo is posted on the City's website for the August 19, 2008 Council Agenda. Additional public outreach efforts will be done at the time the contracts for these projects are awarded.

COORDINATION

This memo has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

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COST SUMMARY/IMPLICATIONS

The federal funding, if the Agreement is executed, will be used to offset the cost of purchasing and installing the In-Line Checked Baggage EDS in Terminal A. The project is appropriated and costs are currently being paid with proceeds from the Airport's commercial paper program. The OTA will provide for the TSA to reimburse the City for eligible costs incurred after October 1, 2007 and no costs were incurred on the project prior to that date. Execution of the OTA will result in a reduction in the amount of commercial paper that will need to be issued to fund the project.

Airport staff has been working closely with the Airport Airlines Affair Committee (AAAC) on the funding of the project. Funding of the TAIP assumed that the City would receive \$22.5 million in grants to support the implementation of the baggage screening systems in the terminals. The airlines have agreed that they would fund a shortfall in grant funding, if it were to occur, to build the automated baggage system that meets their needs. Receipt of funding from the TSA under this proposed OTA reduces the amount of additional funding the airlines would have to cover to build the baggage screening system they want.

BUDGET REFERENCE

Staff will seek Council approvals to recognize and to appropriate the TSA funding once the agreement is executed and amounts are known.

CEQA

Resolution Nos. 67380 and 71451, PP 08-149.



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Director of Aviation

Please direct questions to William Sherry, Director of Aviation, at (408) 501-7669.