



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: William Sherry, AAE

SUBJECT: SEE BELOW

DATE: April 5, 2010

Approved

Date

4/15/10

COUNCIL DISTRICT: City-wide

SUBJECT: Delegation of authority to the City Manager to negotiate and provide compensation to Airport tenants for changes to tenant leasehold and concession areas necessary to accommodate the Airport's capital development program and to approve a Settlement Agreement and Release with Host International, Inc. for redesign costs incurred as a result of changes to a terminal concession area.

RECOMMENDATION

- (a) Adopt a resolution authorizing the City Manager to negotiate with, and provide compensation to, Airport tenants for planning, design, permit and construction costs incurred where the Airport, for the benefit of the general public, requires changes to planned tenant improvements after a design as been approved by the City in a total amount for all such tenant costs incurred not to exceed \$500,000.
- (b) Approve the Settlement Agreement and Release with Host International, Inc.(Host) to pay Host an amount not to exceed \$32,560 in full satisfaction of all planning, design, and permit costs incurred to redesign a concession area located in Terminal A that was relocated by the City after execution of the Host Retail Concession Agreement and completion of design by Host, but prior to tenant improvement construction.

OUTCOME

Approval of this recommendation will: (a) allow the City to fairly compensate tenants at the Airport for changes to their leased and/or concession areas necessary to achieve the overall goals of the Airport capital development program; and (b) provide for compensation to Host for tenant improvement planning, design and permit costs incurred by Host pursuant to the terms of its Retail Concession Agreement where the City required that a concession area be relocated prior to construction.

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BACKGROUND

The \$1.3 billion Airport Terminal Area Improvement Program (TAIP), authorized by Council in 2006, is in the final stages of construction and is on schedule for the opening of the majority of the new facilities by the end of this fiscal year. Project delivery for the majority of the TAIP is through a negotiated design-build contract. Design-build allows for accelerated project implementation through the early authorization of construction while final design is being completed.

Airport tenants are making modifications to their new leased space beyond the standard finishes and equipment provided by the Airport. In many cases, tenants are making significant investments to the new space that they will be occupying. In 2008, the City entered into new Concession Agreements with Host International, Inc., AMS-SJC JV, and Areas USA for food & beverage and retail concessions at the Airport through June 30, 2020. The concessionaires have committed to investing over \$20 million in new capital improvements for 48 new food & beverage and retail stores.

Host will be operating a Sunset News retail location in Terminal A. The design and renderings were approved by the Airport and permits have been issued by the City. Construction of the site has been delayed due to a request by the Airport to change the shape of the space, which in its current configuration will negatively impact the amount of necessary passenger seating. Host has agreed to make the requested changes in an amount not to exceed \$32,560 to be reimbursed by the City.

ANALYSIS

The pace of TAIP construction can result in the need for accommodation between improvements being made for the benefit of the traveling public and improvements being made by third party tenants in their exclusive use space. Examples of such instances are:

- Overlaps of a space leased to a tenant and a designed TAIP improvement.
- Inconsistency of tenant finishes between adjacent tenant spaces, or in tenant's space adjacent to a TAIP improvement.
- Conflicts between building systems and tenant improvements, such as, but not limited to, plumbing, electrical, and mechanical.
- The Airport's decision to convert an area to a different operational use.

While the existing concession agreements with tenants at the Airport provide for the City to compensate tenants for the remaining unamortized value of tenant improvements that are required by the City to be removed after construction and during the term of the concession agreement, the existing concession agreements do not provide a mechanism for compensating the tenant for costs associated with the items noted. In order to fairly compensate impacted

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Airport tenants it is recommended that the City Manager be delegated authority to compensate tenants for planning, design, permit and construction costs incurred in an aggregate amount not to exceed \$500,000 under the following guidelines:

- The Director of Aviation determines that the required change is not the responsibility of the tenant and is required for the benefit of the travelling public.
- The Director of Aviation receives written confirmation from compensated tenants confirming that they have been fully compensated for all costs in connection with the space relocation.
- The Director of Aviation reports any compensation provided to tenants and provides an explanation of that action in a subsequent TAIP Quarterly Report.
- The aggregate compensation provided to tenants will not exceed \$500,000.

A Settlement Agreement and Release has been negotiated with Host and releases the City of any additional claims by Host related to the redesign and changed configuration of the Sunset News in Terminal A. The redesign includes architectural, renderings, reimbursable expenses and permits in an amount not to exceed \$32,560.

EVALUATION AND FOLLOW-UP

The City Manager will report on any compensation provided to tenants along with an explanation of that action in a subsequent TAIP Quarterly Report.

POLICY ALTERNATIVES

Not applicable.

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)**



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This item does not meet the above criteria requiring additional notification; however, it will be posted on the City's Council Agenda Website for the April 27, 2010 Council Meeting.

COORDINATION

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

FISCAL/POLICY ALIGNMENT

This project is consistent with several initiatives identified in the Economic Development Strategy adopted by Council in November 2003, and aligns most significantly with Strategic Initiative #1: Build a World-Class Airport and Air Services.

COST SUMMARY/IMPLICATIONS

1. AMOUNT OF RECOMMENDATION: \$ 532,560
2. COST OF PROJECT: \$ 532,560
3. SOURCE OF FUNDING: 526 – Airport Revenue Bond Improvement Fund
4. OPERATING COSTS: Review of the project determined no significant adverse impact on the General Fund Operating Budget.

BUDGET REFERENCE

The table below identifies the funds and appropriations proposed to fund the recommendation as part of this memorandum.

Fund #	Appn #	Appn. Name	Total Appn	Amount for Procurement	2009-10 Adopted Budget Page	Last Budget Action (Date, Ord. No.)
526	4657	North Concourse Building	\$2,986,000	\$0	V-847	2/9/2010 28698
526	4164	Consolidated Rental Car Facility	\$ 19,783,000	\$ 0	V-838	10/20/2009 28653
526	5253	Terminal Area Improvement, Phase I	\$ 83,453,000	\$ 532,560	V-850	10/20/2009 28653
526	7025	Public Parking Improvement	\$18,819,000	\$0	V-841	10/20/2009 28653
		Total		\$ 532,560		



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CEQA

Resolutions No. 67380 and 71451, PP 10-039

/s/ Kimberly B. Aguirre for
William F. Sherry, A.A.E.
Director of Aviation

For questions please contact William Sherry at (408) 501-7669

