COUNCIL AGENDA: 4-7-09
ITEM: 2.3

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

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

SUBJECT: SEE BELOW

DATE: March 25, 2009

Approved

Date 3/26/09

COUNCIL DISTRICT: City-Wide

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

RECOMMENDATION

Adopt 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 B In-Line Checked Baggage Explosive Detection System and to provide for funding by the TSA of ninety percent (90%) of allowable costs of the baggage screening system not to exceed a maximum potential total reimbursement of $22,339,800, 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 stimulus funds from TSA to purchase and install the In-Line Checked Baggage Explosive Detection System for Terminal B.

BACKGROUND

Since December 2006, the City has been engaged in ongoing discussions with the TSA regarding federal funding for the checked baggage explosive detection systems in Terminal A and Terminal B. In October 2008, the City and TSA signed an Other Transaction Agreement (OTA) that provided for up to $18.1 million in federal funding for the baggage system project in Terminal A. In November 2008, the City submitted a second, separate funding application to TSA for funding the baggage system for Terminal B in federal fiscal year 2008-2009. As he did for the Terminal A project, the Mayor actively advocated for funding for the Terminal B project at the highest levels of TSA. The project has also had the support of the City's Congressional delegation.

In early March 2009, the City learned that the Terminal B project was not included in TSA's annual $250 million for the purchase and installation of explosive detection systems nationwide. However, the adoption of the American Recovery and Reinvestment Act of 2009 (also known as "stimulus legislation") included $1 billion for the procurement and installation of explosive detection systems and checkpoint explosives

detection at airports. Congress directed TSA to prioritize funding to accelerate installation at locations with completed design plans. With that direction, TSA informed the City that the Airport was one of 17 airports nationwide that would be considered to receive a portion of the $700 million disbursement in stimulus funding for the installation of explosive detection systems for checked-baggage screening.

On March 16, the City received a draft Other Transaction Agreement from the TSA for the Terminal B project. This is one-time capital funding in partnership with City matching funds. Funds would be disbursed as reimbursement as authorized expenditures are incurred from the date of execution of the agreement. Unlike the previous OTA for the Terminal A project, stimulus funding does not permit any City expenditures on the project incurred before the execution of the OTA to be reimbursed.

While the agreement covers terms and conditions as well as establishes respective cost sharing obligations and other responsibilities of the TSA and the City, as of this writing it contains no specific funding amount. That will be discussed with the TSA when the City and TSA hold discussions on the agreement in the next few weeks.

The design of the Terminal B system is complete and construction of the system is expected to begin no later than May 2009 with the completed baggage system for Terminal B anticipated to be functional in the early spring of 2010.

ANALYSIS

The Project

The Terminal B 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 B. The total estimated cost of the Terminal B baggage screening system is $21.1 million, however, with the additional infrastructure costs that staff believes are eligible for reimbursement, staff estimates that there are $24,822,000 in costs eligible for reimbursement under the terms of the draft OTA. Based on that estimate, TSA would reimburse a potential maximum of 90% of cost incurred after execution of the OTA, or $22,339,800. This amount does not include costs incurred prior to the anticipated date of execution of the OTA.

Key Agreement Provisions

The draft 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 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. 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 OTA also identifies administrative reporting requirements, including requirements related to the receipt of stimulus 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.

EVALUATION AND FOLLOW UP

As described above, the estimated potential maximum cost reimbursement for the Terminal B Checked Baggage EDS through the Agreement is $22,339,800 million. City Council approval is being requested to complete the negotiations and execute a contract with TSA to receive funding for the Terminal B 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)**

This memo is posted on the City's website for the April 7, 2009 Council Agenda. Additional public outreach efforts will be done, as appropriate, at the time the contracts for these projects are awarded.

☐ **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)**

COORDINATION

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

FISCAL/POLICY ALIGNMENT

The San Jose Municipal Code requires that capital projects at the Airport be consistent with the adopted Airport Master Plan. As the installation of a checked baggage explosive detection system is a component of the Terminal B project expressly identified in the Master Plan as "Project T-11", this proposed agreement is consistent with the Master Plan pursuant to Municipal Code Section 25.04.210(B)(2).

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 B. The project is appropriated and costs are currently being paid with proceeds from the Airport's 2007 bond issue and commercial paper program. The OTA will provide for the TSA to reimburse the City for eligible costs incurred after the date the agreement is executed. Any costs incurred on the project prior to that date will not be reimbursable. 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 09-059.

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Director of Aviation

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