

AGENDA ITEM NO. 19

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
AVIATION DEPARTMENT**

TO: Mayor and City Council

FROM: Kevin C. Dolliole, Aviation Director

THROUGH: Terry M. Brechtel, City Manager

COPIES: Christopher J. Brady, Finance, Management and Budget, Public Works, File

SUBJECT: Memorandum of Agreement with the Transportation Security Administration at San Antonio International Airport

DATE: September 11, 2003

SUMMARY & RECOMMENDATION

This ordinance authorizes the execution of a Memorandum of Agreement (MOA) with the Transportation Security Administration (TSA) in support of a Letter of Intent (LOI) for their fiscal participation in the new baggage conveyance system improvements at San Antonio International Airport.

This MOA outlines the responsibilities of both parties and tentatively obligates the TSA to participate in 75% of the costs of the new system, up to a maximum of \$30,417,000.00, contingent upon the availability of funds.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

The City has in its Five Year Capital Program a new baggage conveyance system as part of the Terminal Expansion Program. Currently, baggage screening is being conducted in the terminal lobby ticketing area by the TSA. This new system, to be located behind the terminal structures, will free up the ticketing lobbies for passenger queuing and movement.

The events of September 11, 2001 resulted in the formation of the TSA, a federal agency charged with, in part, the responsibility of implementing security mandates including 100% positive baggage screening. This mandate was to be fully implemented by December 31, 2002. In order to meet this deadline, virtually all airports were integrated with a system located in public areas, predominantly ticketing concourses. The large, intrusive screening machines together with ancillary equipment and space requirements resulted in crowded ticketing areas, passenger queuing problems and overall poor customer service.

The TSA recognizes that having baggage screening in the public areas is an interim solution while permanent solutions can be evaluated, designed and implemented. While the baggage screening was in the process of becoming fully implemented in the public areas, the City was in the schematic design phase of the

new terminal expansion to include new baggage conveyance systems. Taking a proactive role, the City participated with the TSA to plan and design the new system to the TSA's satisfaction by January 2003, which resulted in the qualification of a LOI offer for fiscal participation. By implementing this system, customer service will be greatly improved.

The TSA has offered a LOI to assist in financing the baggage conveyance system improvements through a Memorandum of Agreement (MOA). In order to qualify for the potential fiscal participation by the TSA, it is necessary to execute a MOA, which outlines the responsibilities of both parties.

The new security components were identified in the February 20, 2003 City Council B session briefing wherein it was disclosed that federal funding would be sought in an attempt to offset this unanticipated terminal expansion cost resulting from the events of September 11, 2001.

POLICY ANALYSIS

The execution of this Memorandum of Agreement continues the policy of utilizing federal funds when available.

FISCAL IMPACT

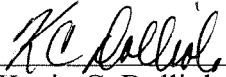
This action has no direct program impact. The cost for the new baggage conveyance system is included on the Terminal Expansion budget. However, if and when federal funds become available, there will be a potential of recovering up to 75% of the system costs to a maximum of \$30,417,000.00.

COORDINATION

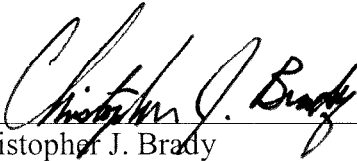
This request for ordinance has been coordinated with the Public Works, Finance and Management and Budget Departments.

SUPPLEMENTARY COMMENTS

The Discretionary Contracts Disclosure Form is not required for this proposed action.



Kevin C. Dolliole
Aviation Director



Christopher J. Brady
Assistant City Manager

Approved:



Terry M. Brechtel
City Manager

MEMORANDUM OF AGREEMENT

Between

**CITY OF SAN ANTONIO
and**

TRANSPORTATION SECURITY ADMINISTRATION

This Memorandum of Agreement ("MOA") is made and entered into this ____ day of _____, 2003 between the CITY OF SAN ANTONIO ("CITY"), a Texas Municipal Corporation, and the United States of America, acting through the Transportation Security Administration ("TSA");

WHEREAS, screening of all checked baggage for explosives is required at commercial service airports, including SAN ANTONIO INTERNATIONAL AIRPORT ("SAT");

WHEREAS, the TSA intends to meet the requirement at SAT by installing explosives detection systems ("EDS") in an "in-line" baggage system;

WHEREAS, modifications must be made to SAT's facilities for the "in-line" installation and operation of the EDS;

WHEREAS, the CITY and TSA desire to commit certain resources for the necessary modifications to the SAT facilities;

WHEREAS, the CITY desires that TSA reimburse SAT for the costs of certain modifications to SAT facilities, subject to the conditions set forth herein;

NOW, THEREFORE, the TSA and the CITY mutually agree as follows:

ARTICLE 1 EFFECTIVE DATE AND TERM

This MOA is expressly subject to and shall not be or become effective or binding on the CITY until it has been approved by the CITY COUNCIL OF THE CITY OF SAN ANTONIO and fully executed by all signatories of the CITY. The effective date of this MOA is the date on which it is signed by the TSA and by the CITY, and shall be the date of the last signature. This MOA shall remain in effect until September 30, 2007, unless terminated earlier by the parties, as provided herein.

ARTICLE 2 AUTHORITIES

TSA enters into this MOA under the authority of the Aviation and Transportation Security Act of 2001 ("ATSA"), Pub. L. 107-71, Sections 114(m), 106(l) and (m) of 49 U.S.C., and Section 367 of the Department of Transportation and Related Agencies Appropriations Act, 2003 (Division I

of P.L. 108-7). CITY enters into this MOA by and through its City Manager under the authority and pursuant to Ordinance No. _____ adopted _____ 2003.

ARTICLE 3 SCOPE

The purpose of this MOA is to set forth the parties' agreement with respect to funding and a schedule for performance of work for the engineering, design and construction of modifications to SAT's facilities in order to enable the TSA to install and operate EDS units "in-line" with SAT's baggage system to screen checked baggage. This MOA is not intended to be, nor shall it be construed as, a partnership, corporation, or other business organization.

ARTICLE 4 MILESTONES

1. The CITY will provide the necessary modifications to or construction of the SAT's "in-line" baggage system facilities to enable the TSA to install and operate explosive detection systems "in-line" with SAT's existing baggage systems (the "Project"). The schedule for performance of the work by the CITY and TSA, shall be set forth in the "Schedule," which shall be agreed to by the parties within 30 days of the effective date of this MOA, shall be incorporated herein by reference when signed by the authorized representatives of TSA and the CITY, and will be attached hereto as Exhibit A. Time is of the essence for completion of this work and it is anticipated by the parties that work will be completed so that explosive detection systems will be in place and operational in accordance with Exhibit A.

2. All work performed by the CITY pursuant to this MOA shall be accomplished in accordance with the design approved by TSA.

ARTICLE 5 REPORTING REQUIREMENTS

The CITY shall provide the TSA with the following:

- a) Design Drawings,
- b) Interface requirements for equipment to be installed by TSA,
- c) All contracts that the CITY proposes to execute for work to be performed under this MOA that exceed \$10 million, fourteen (14) days in advance of execution, for review and approval by TSA, and
- d) Prior to commencing work, for review and approval by TSA, a detailed estimate of costs to complete the work.

ARTICLE 6 PERFORMANCE REQUIREMENTS

The CITY shall prepare a detailed design of the Project for review and approval by TSA, including floor plans showing locations and service connections of equipment, specifications prepared in Construction Specifications Institute 16-division format to the extent feasible, final plans and specifications for the complete site preparation, and a cost estimate. The CITY will modify its baggage sorting system in a manner that is consistent with the approved TSA design. Once TSA receives notification that the modifications have been completed, TSA will install the explosive detection and associated equipment in SAT's baggage system.

ARTICLE 7 FUNDING AND PAYMENT

1. The CITY agrees to initially fund the Project. The parties anticipate that they may amend this MOA to provide for reimbursement by TSA of 75 percent of the total Project costs of

\$40,556,760 or \$30,417,000. Reimbursement shall be in accordance with the terms set forth in the Letter of Intent ("LOI"), attached hereto as Exhibit B, and incorporated herein by reference. TSA's intent to reimburse the CITY for its Project costs shall not be deemed an obligation of the United States Government under section 1501 of title 31, United States Code, and the LOI is not an administrative commitment for financing. An obligation or administrative commitment may be made only as amounts are provided in authorization and appropriations laws.

2. Funds are not presently available for reimbursement to the CITY for 75 percent of the Project costs to perform under this MOA, and no legal liability on the part of the TSA for any payment may arise for performance under this MOA unless and until funds are appropriated for this program activity, such funds are made available to the Contracting Officer for performance under this MOA, the CITY receives notice of availability of such funds (provided in writing from the Contracting Officer), the MOA is amended to obligate funds, and provided that the CITY initially finances the Project for its share of the work described in this MOA. Any determination of additional funding is within the sole discretion of TSA.

3. Under no circumstances will TSA be responsible to pay and the CITY entitled to receive profit, overhead or general and administrative expenses for the work performed.

4. If, and to the extent funds are appropriated and obligated in accordance with Article 7, paragraph 1, above, a properly executed request for payment should be submitted to the TSA on a monthly basis at the billing address identified below.

Libby Waldman Strugatch
Contracting Officer
Transportation Security Administration – Headquarters
4th Floor, West Tower – TSA 14
400 Seventh Street, NW
Washington, DC 20590

5. If, and to the extent funds are appropriated and obligated in accordance with Article 7, paragraph 1, above, the TSA shall reimburse the CITY for the Federal share within 30 days after receipt of properly documented invoices for work performed in designing and constructing the facility modifications in accordance with Schedule A. TSA shall not be responsible for costs incurred by the CITY's contractors in performing work under this MOA that are not reasonable or allowable. In determining allowable costs, the parties shall be guided by the Federal Aviation Administration's Contract Cost Principles in effect on the effective date of the MOA.

6. The CITY shall have title to any improvements to its facilities and equipment installed by the CITY under this MOA and TSA shall have title to all explosives detection equipment purchased and installed by TSA in SAT facilities.

ARTICLE 8. LIMITATION OF FUNDS

The Federal Government's liability to make payments to the CITY is limited to the amount of funds obligated hereunder, including written modification of this MOA.

ARTICLE 9. AUDITS

1. As used in this Article, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

2. The CITY shall maintain and the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this MOA. This right of examination shall include inspection at all reasonable times of CITY's facilities, or parts of them, engaged in performing the MOA.

3. Comptroller General--

(a) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the CITY's directly pertinent records involving transactions related to this MOA or contracts or agreements hereunder.

(b) This paragraph may not be construed to require the CITY or its contractors and subcontractors to create or maintain any record that the CITY or its contractors and subcontractors do not maintain in the ordinary course of business or pursuant to a provision of law.

(c) The CITY shall make available at its office at all reasonable times the records, materials and other evidence described in Article 9.1 –9.3, for examination, audit, or reproduction, until 3 years after final payment under this MOA, or for any longer period required by statute -- In addition--

(1) If this MOA is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and

(2) Records relating to disputes under Article 17, below, shall be made available until resolution of the dispute is final.

(d) The CITY shall insert a clause containing all the terms of Article 9.1-9.3 in all its contracts and subcontracts under this MOA that exceed \$100,000.00 (one hundred thousand dollars).

4. The CITY will keep all project accounts and records which fully disclose the amount and disposition by it of the money transferred by the TSA to the CITY or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with Generally Accepted Accounting Principles.

5. The Administrator of TSA may require that an appropriate audit be conducted by the CITY. In any case in which an independent audit is made of the accounts of the CITY relating to the disposition of the proceeds of the money transferred or relating to the project in connection with

which the aforementioned money transfer was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

ARTICLE 10: INTEGRATION, CHANGES, AND MODIFICATIONS

This MOA is intended as the complete integration of all understandings between the parties as to the subject matter hereof. No prior or contemporaneous addition, deletion or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement properly executed by the parties. Changes and modifications to this MOA shall be in writing and signed by the TSA Contracting Officer and duly executed by the CITY. Any modification shall cite this MOA, and shall state the exact nature of the modification. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this MOA. Notification of changes to parties other than as specified hereinabove shall not be considered to be in compliance with this requirement.

ARTICLE 11: GOVERNMENT FURNISHED MATERIAL

1. The TSA shall furnish the following government furnished material (GFM):
 - a. Invision 9000 CTX machines or equivalent EDS equipment
 - b. All installation and connecting equipment
2. The TSA shall deliver the GFM to the site at an appropriately scheduled date, consistent with Schedule A. The TSA shall unload, inspect, inventory, store and install the GFM.
4. The TSA shall be responsible for testing and insuring that the GFM is operational.

ARTICLE 12. POINTS OF CONTACT

For the CITY:

Kevin C. Dolliole, Aviation Director
San Antonio International Airport
9800 Airport Blvd.
San Antonio, Texas 78216

For Transportation Security Administration:

Chief Technology Officer
Transportation Security Administration – Headquarters
7th Floor, West Tower – TSA 16
400 Seventh Street, SW
Washington, DC 20590

ARTICLE 13. ORDER OF PRECEDENCE

In the event of any inconsistency between the terms of this MOA and any plans, specifications or drawings, the inconsistency shall be resolved by giving preference to the MOA.

ARTICLE 14. CONSTRUCTION OF THE MOA

1. This MOA shall be governed by Federal law.

2. Each party acknowledges that all parties hereto participated equally in the negotiation and drafting of this MOA and any amendments thereto, and that, accordingly, this MOA shall not be construed more stringently against one party than against the other.

ARTICLE 15. LIMITATION OF LIABILITY

Claims for damages by the CITY, of any nature whatsoever, pursued under this MOA shall be limited to direct damages only up to the aggregate amount of funding obligated and available under this MOA. Neither the TSA nor the City assumes any liability under this MOA for any losses arising out of any action or inaction by the other party, or its employees, or contractors, or any third party action on its behalf.

The UNITED STATES GOVERNMENT TRANSPORTATION SECURITY AGENCY, as an independent establishment of the Executive Branch of the Government of the United States, is self-insured for purposes of potential liability. Under the Federal Tort Claims Act, 28 U.S.C 2671-2680 and 1346, TSA may consider and claim for money damages for injury or loss of property or personal injury or death based on the wrongful act or negligence of its employees acting within the scope of their employment to the same extent that a private person would be liable in accordance with the law of the place where the negligent or wrongful act or omission occurred. The procedures for filing a claim under the Federal Tort Claims Act with the Lessee are found under 28 C.F.R. 14. The Lessee does hereby agree to be liable to the extent of the Federal Tort Claims Act.

ARTICLE 16. TERMINATION

The parties may terminate this MOA with 30 days' written notice to the other party. In the event of termination or expiration of this MOA, any TSA funds which have not been spent or obligated for allowable expenses prior to the date of termination, and are not reasonably necessary to cover termination expenses, shall be returned to the TSA. In the event that either party terminates the MOA, the terminating party shall be responsible to pay the non-terminating party for any additional costs incurred by non-terminating party resulting from the termination.

ARTICLE 17. DISPUTES

Where possible, disputes will be resolved by informal discussion between the appropriate the CITY representative and the Contracting Officer. In the event that the parties are unable to resolve any disagreement through good faith negotiations, the dispute will be resolved by submission of the dispute to the TSA Administrator or his designee for resolution. The parties agree that the Administrator's decision may be appealed to the Court of Claims and/or Board of Contract Appeals.

ARTICLE 18. LIMITATION OF USE OF LOI FUNDS

In accordance with Section 367 of the Department of Transportation and Related Agencies Appropriations Act, 2003 (Division I of P.L. 108-7), the CITY is not eligible for reimbursement of the Federal share for that portion of any work under this MOA that is performed using Airport Improvement Program funds under Chapter 471 of title 49, United States Code.

AGREED:

TRANSPORATION SECURITY ADMINISTRATION

By: _____

(CITY SEAL)

CITY OF SAN ANTONIO

ATTEST: _____
City Clerk

BY: _____
City Manager

APPROVED: _____
City Attorney

LETTER OF INTENT CITY OF SAN ANTONIO

This Letter of Intent ("LOI") sets forth intention of the Transportation Security Administration ("TSA"), effective this date, in accordance with the provisions of section 367, Division I, of the Consolidated Appropriations Resolution, 2003 (Pub. L.108-7), and the Memorandum of Agreement ("MOA") to which this LOI is appended, to obligate from future budget authority to reimburse the CITY OF SAN ANTONIO ("CITY") for the United States share of allowable costs at the SAN ANTONIO INTERNATIONAL AIRPORT ("SAT") for the Project described as follows:

Terminal Modifications & Additions for Back of House, In-line Baggage Screening
At
San Antonio International Airport

The maximum United States obligation pursuant to this LOI for the Project described above shall be an amount not to exceed 75 percent of the total Project costs of \$40,556,760 or \$30,417,000. Upon application by the CITY, and after funds have been appropriated and obligated, TSA shall issue funds to reimburse the CITY from future budget authority, according to the following schedule:

<u>Fiscal Year</u>	<u>Federal Funds</u>
FY2004	\$14,728,000
FY2005	\$11,485,000
FY2006	\$ 3,302,000
FY2007	<u>\$ 902,000</u>
Total:	\$30,417,000

The announcement of this intention shall not be deemed an obligation of the United States Government under section 1501 of title 31, and the LOI is not deemed to be an administrative commitment for financing. An obligation or administrative commitment may be made only as amounts are provided in authorization and appropriations laws.

The TSA may, from time to time, following consultation with the CITY, amend this LOI and the MOA to adjust, up or down, the payment schedule, and such adjustments may be made by the TSA when occasioned by changes in the actual allowable costs of the Project, in the actual time required to complete the Project, in actual or estimated future obligating authority, or otherwise, when determined at the Administrator's discretion to be in the best interests of the United States.

The TSA will give full consideration to the aggregate amount of future obligations and the payments scheduled under all outstanding LOIs in formulating its annual budget requests. A statutory restriction on total obligating authority in a future fiscal year, however, may necessitate a reduction in funds to be reimbursed for that year. This may result in a concurrent reduction in a payment scheduled under this LOI.

EXHIBIT B

If, in any given year and for whatever reason (including such reasons as inability of the CITY to make sufficient progress for the Project), a payment is deferred in whole or in part, any later reimbursement for the deferred amounts will be subject to negotiation between the parties, subject again to the availability of funds and statutory authority. No amendment to this LOI shall impair the CITY's eligibility for future reimbursement of the United States share of allowable Project costs pursuant to section 367, as funds become available.

SAT should understand that, having proceeded with the Project without the aid of funds from TSA, in order to receive reimbursement as specified in the schedule set forth above, it must comply with the MOA, to which this LOI is appended and made a part thereof. Failure to comply with all such requirements or failure to proceed with the Project in a timely manner, may lead to revocation of this LOI and termination of the MOA accordance with the terms of the MOA.

In the event that the federal share of the Project is more or less than estimated in this LOI, TSA will adjust the amount of funds to be reimbursed to the CITY.

United States of America
Transportation Security Administration

J.M. Loy, ADM
Administrator