

OTHER TRANSACTION AGREEMENT

APPROVED AS TO FORM

By:

Michael A. Zas

Office of the County Attorney



AGREEMENT

BETWEEN

**DEPARTMENT OF HOMELAND SECURITY
TRANSPORTATION SECURITY ADMINISTRATION (TSA)**

AND

PINELLAS COUNTY GOVERNMENT

Relating to

**ST.PETE CLEARWATER-INTERNATIONAL AIRPORT
Terminal A CBIS Design**

**Negotiated by the TSA pursuant to Aviation and Transportation Security Act, Pub. L. 107-71,
115 Stat. 597, 49 U.S.C. 114(m)(1), 49 U.S.C. 106(l)(6), and the Homeland Security Act of 2002**

AGREEMENT NUMBER HSTS04-16-H-CT1219

ARTICLE I - PARTIES

This Other Transaction Agreement (hereinafter referred to as "Agreement" or "OTA") is entered into between the U.S. Department of Homeland Security, Transportation Security Administration (hereinafter referred to as "TSA") and **COUNTY OF PINELLAS dba BOARD OF COUNTY COMMISSIONERS** (hereinafter referred to as the "**AIRPORT SPONSOR**") relating to the **ST. PETE-CLEARWATER INTERNATIONAL AIRPORT (PIE or Airport)**. The TSA and the **AIRPORT SPONSOR** agree to cooperate in good faith and to perform their respective obligations using their cooperative good faith efforts in executing the purpose of this Agreement.

ARTICLE II – LEGAL AUTHORITY

TSA and the **AIRPORT SPONSOR** enter into this Agreement under the authority of the Aviation and Transportation Security Act, Pub. L. 107-71, 115 Stat. 597, specifically 49 U.S.C. 106(l)(6) and 114(m)(l), which authorizes agreements and other transactions on such terms and conditions as the Administrator determines necessary.

ARTICLE III – SCOPE

The purpose of this Agreement is to set forth the terms and conditions, as well as establish the respective cost-sharing obligations and responsibilities of the TSA and the **AIRPORT SPONSOR** with respect to the design services necessary to construct an inline Checked Baggage Inspection System (CBIS) utilizing Explosive Detection Systems (EDS) at the Airport. The design services will result in 100% drawings and specifications and will be submitted in accordance with the published TSA Planning Design Guidelines and Design Standards (PGDS) Version 5.0 dated July 15, 2015 found at: <https://www.fbo.gov/spg/DHS/TSA/HQTSA/HSTS04-15-I-OSC001/listing.html>

This Design Services Project requires the **AIRPORT SPONSOR** to provide the architect and engineering services to develop the design and construction specifications to install the inline CBIS within the **Terminal A** (hereinafter "the Project"). The CBIS design needs to address Airport Terminal modifications required to be made to incorporate the CBIS to include required changes to the baggage conveyor components and programming, mechanical, plumbing, electrical, structural, and telecommunications, or other infrastructure to provide for the installation of the EDS units within the baggage screening area as well as Explosive Trace Detection (ETD) resolution area(s) and the installation of hardware and software for use with an inline CBIS. The Project will also encompass the design of Checked Baggage Resolution Areas (CBRAs) and a multiplexed On-Screen Resolution (OSR) Room. The objective of this Agreement is to provide the design documents and specifications to identify the necessary construction modifications required to install an inline CBIS in order to enhance the security and baggage screening capabilities at the Airport. The TSA detailed design deliverables for each Design Phase to be provided by the **AIRPORT SPONSOR** are outlined in the TSA PGDS version 5.0. The Design Phases include:

1. Pre-Design Phase: Preliminary Alternative Analysis Report and Preferred Analysis Report
2. Schematic Design Phase: Basis of Design Report and associated deliverables

3. Detailed Design Phase

- a. 30 % Design Submittals and associated deliverables
 - b. 70% Design Submittals and associated deliverables
 - c. 100% Design Submittals and associated deliverables
4. Construction Bid proposal documentation to include contract solicitation, requirements issued to prospective contractors, bid specifications and other applicable documents that complete the local request for proposal package.
5. Construction Bid proposal evaluation.

Before the **AIRPORT SPONSOR** may proceed from one Design Phase to the next, it must receive TSA's written approval. If TSA does not approve of the **AIRPORT SPONSOR** proceeding to the next Design Phase, then TSA shall notify the **AIRPORT SPONSOR** in writing and shall reimburse the **AIRPORT SPONSOR** for costs incurred on the Design Project through the date that TSA's notification is received by the **AIRPORT SPONSOR**.

Any future allowable, allocable and reasonable costs for CBIS construction, project management, construction management, and commissioning/site acceptance testing is anticipated to be funded through a separate Agreement between the **AIRPORT SPONSOR** and the TSA. This Agreement shall not be construed to obligate the TSA, in any manner, to provide construction cost funding or obligate the TSA to enter into an Agreement with the **AIRPORT SPONSOR** for reimbursement of construction costs related to the CBIS Project. TSA funding for the construction portion of the CBIS Project is subject to the Congressional authorization and appropriation budget process.

ARTICLE IV – RESPONSIBILITIES

A. Cost Sharing

1. Capital Costs: The estimated cost of the Project refers to the design services to be completed by the **AIRPORT SPONSOR** to develop the necessary design documents for the construction modifications needing to be made to the Terminal building and associated baggage conveyor system to support the CIBS installation. It does not include the costs of acquisition, delivery or installation of the EDS and ETD system itself. All work performed by the **AIRPORT SPONSOR** pursuant to this Agreement shall be accomplished in accordance with the TSA PGDS version 5.0 in effect at the time this Agreement is executed and in accordance with the applicable local Building Standards and Criteria. Recognizing the uniqueness of this Project, in the event of any conflicts between the provision of the PGDS and this Agreement, the Parties agree to resolve such conflicts through the design review and Alternative Analysis processes described in the TSA PGDS, Version 5.0.

2. The estimated cost for the design services for the Project is \$721,511. TSA agrees to reimburse the **AIRPORT SPONSOR** for ninety five percent (95%) of the allowable, allocable and reasonable costs of the design services for the Project, in the amount of \$685,436 (95% of \$721,511). This OTA will also include contingency funds in the amount of \$68,543 (calculated as 10% of \$685,436), not to exceed a total TSA Reimbursement limit of **\$753,979**. Use of contingency funds must be authorized in accordance with paragraph 6 of this Article.
 - a. For all out-of house printing (or third party printing) and other than local travel (travel outside of the Tampa Bay area), TSA agrees to pay seventy five percent (75%) of the allowable, allocable, and reasonable, costs not-to-exceed \$33,000 of the total TSA Reimbursement limit of **\$753,979**.
3. TSA will determine allowable and allocable costs in accordance with the OMB Circular A-87 "Cost Principles for State, Local and Indian Tribal Governments" codified at 2 C.F.R. Part 225 (together with Appendices A – D). TSA will reimburse the **AIRPORT SPONSOR** on an actual expense basis supported by one or more invoices submitted by the **AIRPORT SPONSOR** in accordance with Article VIII "Billing Procedure and Payment." The parties understand and agree that all Project costs in excess of the TSA Reimbursement Limit of **\$753,979** as well as any costs that are inconsistent with OMB A-87 and the guidance set forth in the TSA PGDS and The Electronic Baggage Screening Program TSA Funding of Checked Baggage Inspection System Projects version 2.0, shall be borne solely by the **AIRPORT SPONSOR** unless otherwise agreed by the TSA in a written modification in accordance with this Article IV and Article XIV "Changes and/or Modifications." Should the TSA reimbursements of **\$753,979** as adjusted pursuant to Article XIV, represent more than 95% of the final allowable and allocable, and reasonable Project costs, the **AIRPORT SPONSOR** will refund TSA sufficient funds such that TSA's total reimbursement will equal no more than 95% of the final allowable, allocable and reasonable Project costs.
4. All costs requested for reimbursement must satisfy the requirements of OMB Circular A-87. In general, the costs for which TSA will provide reimbursement under this Agreement are limited to those costs associated with Design Deliverables mandated by the TSA PGDS and "TSA PGDS Design and Construction Deliverables Checklist." The Electronic Baggage Screening Program TSA Funding of Checked Baggage Inspection System Projects version 2.0 provides guidance regarding the reimbursable costs for TSA CBIS Projects and is available upon request to the Contracting Officer or here: <https://www.fbo.gov/spg/DHS/TSA/HOTSA/HSTS04-15-I-OSC001/listing.html>
5. Change Orders are defined as work that is added to or removed post OTA award that consequentially adds cost or changes the scope of the OTA. Change orders shall not be considered authorization to exceed TSA's Reimbursement Limit. Any changes to the authorized amount shall be submitted by the **AIRPORT SPONSOR** to the TSA Contracting Officer Representative (COR) and TSA Contracting Officer (CO) prior to any work starting. Once the COR and CO have been given advance notice of the impact the Change Order has on the total cost of the Project, if agreed to by TSA, the TSA CO will provide written approval to the **AIRPORT SPONSOR** to proceed with the work identified in the Change Order. TSA will not reimburse the **AIRPORT SPONSOR** for any cost incurred for change order work that was not pre-approved by TSA.
6. Change Requests are defined as requests for the utilization of contingency funds that do not add costs or changes to the scope of the OTA. Change requests shall not be considered

authorization to exceed TSA's Reimbursement Limit. Any change requests shall be submitted by the **AIRPORT SPONSOR** to the TSA COR prior to any work starting. Once the COR has been given advance notice of the impact the change request has on the Project, if agreed to by TSA, the TSA COR will provide written approval to the **AIRPORT SPONSOR** to proceed with the work identified in the Change Request. TSA will not reimburse the **AIRPORT SPONSOR** for any cost incurred for change request work that was not pre-approved by TSA.

7. Timely invoicing and management of costs is critical to TSA's portfolio management. The specific cost sharing adjustments are outlined in **ARTICLE VIII – BILLING PROCEDURE AND PAYMENT**.

B. Project Responsibilities

The primary Project responsibilities of the TSA and the **AIRPORT SPONSOR** are outlined below. The Project will be overseen by the **AIRPORT SPONSOR**.

i. TSA Responsibilities

1. Upon request by the **AIRPORT SPONSOR**, TSA will provide the **AIRPORT SPONSOR** with the following historical data for the Airport:
 - a. Bag information reports (a.k.a. FDRS reports) for all the EDS, if available
 - b. Enhanced Staffing Model results and reports
2. TSA reserves the right to determine the number, manufacturer, and model of EDS units to be used in the Project at the Airport and will notify the **AIRPORT SPONSOR** of any requests to incorporate specific EDS models into the Project at the earliest possible time. If TSA requests that the **AIRPORT SPONSOR** make changes to an alternative solution or perform any other work to accommodate a request by TSA for a specific EDS model after TSA approves the 30% Design submission, the **AIRPORT SPONSOR** shall be entitled to full reimbursement of its costs to make such changes or perform such work. This provision does not apply to such changes made prior to TSA approval of the 30% Design submission.
3. TSA will review and concur in writing, within project defined review times, with the Project design, plans, and specifications for alternative analysis, schematic, 30%, 70% and 100% design packages for the installation of the EDS in the CBIS based upon the recommendations and guidelines in the TSA PGDS Version 5.0.
4. TSA will consider no more than three design alternatives during the design review process in order to achieve the most efficient screening solution for both TSA and the **AIRPORT SPONSOR**.
5. TSA will provide the EDS specification(s) at the beginning of the Project.
6. TSA will provide EDS Original Equipment Manufacturer Technical Advisory Support Services to the **AIRPORT SPONSOR** regarding integration of the EDS machines into the BHS.
7. TSA will review and consider requested changes to the design and associated costs.

ii. AIRPORT SPONSOR Responsibilities

1. Except for the responsibilities of the TSA, as outlined above, the Project will be managed and overseen by the **AIRPORT SPONSOR**. The **AIRPORT SPONSOR**, acting through such contractors as it may engage, using the **AIRPORT SPONSOR's** procurement process, will provide the engineering and design services necessary for successful completion of the Project. The **AIRPORT SPONSOR** will provide oversight of such contractor(s) to ensure the Project conforms to the TSA design guidelines identified in the PGDS version 5.0 and is completed within the prescribed schedule identified and incorporated herein as Appendix A.
2. The **AIRPORT SPONSOR** must receive concurrence from TSA at each stage of the design review in order to proceed to the next design review stage.
3. The **AIRPORT SPONSOR** shall provide a budgetary construction cost estimate with the schematic, 30% design review and subsequent 70% and 100% design reviews for the Project.
4. The **AIRPORT SPONSOR** shall obtain all necessary licenses, insurance permits and approvals during performance of the Project.
5. The **AIRPORT SPONSOR** shall ensure the EDS OEM (EDS Original Equipment Manufacturer) site planning, installation, integration and networking guidelines are incorporated into the design to ensure operational, maintenance and environmental specifications are met.
6. The **AIRPORT SPONSOR** shall ensure that all connections between the EDS equipment and the baggage handling system meet the requirements of the EDS OEM integration guide, and that the TSA cabling guidelines as given in the PGDS are followed for any connections. The **AIRPORT SPONSOR** or their authorized representative shall coordinate all activities involving such connections directly with the EDS OEM. If questions or concerns about the data connection or any of the relevant requirements arise, the **AIRPORT SPONSOR** shall communicate the issue/concern with the TSA COR.
7. The **AIRPORT SPONSOR** shall provide reasonable measures to protect the EDS and ETD equipment from unauthorized access, harm, theft, and water intrusion in the screening area within the design and phasing plan.
8. The **AIRPORT SPONSOR** shall incorporate heating, ventilation, air conditioning into the design as well as OSHA requirements for those spaces occupied by TSA personnel.
9. The **AIRPORT SPONSOR** shall ensure that all applicable STIP data requirements are incorporated into the design in accordance with the PGDS.
10. Appendix B "Schedule of Deliverables" identifies required deliverables to be submitted by the **AIRPORT SPONSOR**. The **AIRPORT SPONSOR** shall submit the deliverables identified in Appendix B by the due dates prescribed.

ARTICLE V - EFFECTIVE DATE AND TERM

The term of this Agreement shall be from the date of execution of the Agreement until **18 months after award**, unless earlier terminated by the parties pursuant to Article XIII "Termination" as provided herein or extended by mutual agreement pursuant to Article XIV "Changes and/or Modifications", in order to allow the **AIRPORT SPONSOR** time to submit a final invoice, close out the Project, and address any other issues.

The **AIRPORT SPONSOR** will establish and provide to the TSA COR and TSA CO, within 10 business days following the execution of this Agreement, Project Milestones that allow objective

measurement of progress toward Project completion. TSA maintains the right to identify any additional Project Milestones to be tracked by the **AIRPORT SPONSOR**.

ARTICLE VI – ACCEPTANCE AND PROJECT COMPLETION

TSA will deem the Project complete upon review and approval of the 100% design package for the CBIS, OSR and CBRA for each Terminal, and submission of construction bid information to TSA. The design must conform to TSA's PGDS version 5.0. Successful completion requires the correction of any non-conformances, deficiencies or other comments that require adjudication identified during the design review process. TSA will release the funds retained pursuant to Article VIII only after approval of the 100% design package, all deficiencies have been corrected and all outstanding comments addressed, and construction bid information has been accepted by TSA.

ARTICLE VII - FUNDING AND LIMITATIONS

TSA will provide funding to the **AIRPORT SPONSOR** in an amount not to exceed **\$753,979** (TSA Reimbursement Limit). Funds in the amount of **\$753,979** are hereby obligated and made available for payment for performance under this Agreement. Expenses incurred in executing the work identified herein are chargeable to:

PR: 2116-206-CT1219
 Accounting Line: 5CF14XB010D2016SWE044GE013723006200622CTO/
 5903001122010000/251B/TSA DIRECT/DEF. TASK
 Amount: **\$753,979**

In the event of termination or expiration of this Agreement, any TSA funds that have not been spent or incurred for allowable expenses prior to the date of termination and are not reasonably necessary to cover allowable and allocable costs as of the date of termination will be returned and/or de-obligated from this Agreement. TSA's liability to make payments to the **AIRPORT SPONSOR** is limited to the funds obligated and available for payment hereunder, including written modifications to this Agreement.

Under no circumstances will TSA be responsible to reimburse the **AIRPORT SPONSOR** for profit or the general costs of government. The **AIRPORT SPONSOR** may recover the allowable direct costs of **AIRPORT SPONSOR** personnel performing work necessary under this Agreement, as well as the allowable and allocable costs of the contractors hired by the **AIRPORT SPONSOR** to perform the necessary work under this Agreement. Profit and overhead costs for the **AIRPORT SPONSOR** contractors performing work on the Project are allowable costs. Submission of a cost allocation plan is required to address any indirect costs, to include the **AIRPORT SPONSOR** employees, who work on multiple activities that will result in a request for reimbursement under this Agreement. TSA will not be responsible for costs incurred by the **AIRPORT SPONSOR**, its contractors or agents to perform work not in compliance with the TSA requirements in this Agreement. The TSA CO has the right to recoup any payments made to the **AIRPORT SPONSOR** if the TSA CO determines that the invoices exceed the actual costs incurred, or if the work substantially deviates from the TSA approved design requirements for the Project pursuant to this Agreement.

TSA will reimburse only for allowable, allocable and reasonable costs in accordance with the OMB Circular No. A-87 in effect on the Effective Date of the Agreement (codified at 2 C.F.R. Part 225).

ARTICLE VIII – BILLING PROCEDURE AND PAYMENT

A. Payment / Performance Provisions

The United States Coast Guard Finance Center performs the payment function on behalf of the TSA. For purposes of submission to the Coast Guard Finance Center, the **AIRPORT SPONSOR** must submit a completed Summary Invoice. Registration in the System for Award Management (SAM) is mandatory for invoice payment. To obtain information regarding SAM, please refer to <https://www.sam.gov/portal/public/SAM/>.

Invoices for reimbursable expenses will be submitted every thirty (30) days, as expenses are incurred. For periods in which the **AIRPORT SPONSOR** has not incurred a reimbursable expense, an invoice is not required. However, a Memorandum noting the non-submission of an invoice in a specific month must be submitted to the TSA CO and/or COR to document the record. This can be sent in conjunction with the monthly reports. Expenses are considered to accrue on the date that the **AIRPORT SPONSOR** is invoiced from a contractor, sub-contractor, supplier, or provider of services. Reimbursement by TSA is conditioned upon submission to TSA of an invoice identifying the Project costs that have been incurred and paid. The TSA intends to make payment to the **AIRPORT SPONSOR** within 120 days from receipt of each properly prepared invoice for reimbursement of incurred Project costs.

Ten percent (10%) of all submitted costs identified by TSA as allowable, allocable and reasonable shall be retained by TSA until completion of the Project, and shall only be reimbursed to the **AIRPORT SPONSOR** upon successful completion of all of its obligations under this Agreement as defined in Article VI of this Agreement.

In the event that an invoice for reimbursable expenses is not received by the TSA within a twelve (12) month period, the TSA reserves the right to terminate the Agreement per Article XIII "Termination."

B. Invoicing

The **AIRPORT SPONSOR** invoice format is acceptable. However, the invoice shall, at a minimum, include the following:

1. Agreement Number
2. Invoice Number and Invoice Date
3. Name and Address of the **AIRPORT SPONSOR** Requesting Fund Disbursement
4. Point of Contact, with Address, Telephone, Fax and E-mail Contact Information
5. Tax Identification Number and DUNS Number
6. Supporting Documentation to include Invoices or Other Documentation that Substantiates the Amount of Funds to be Disbursed by TSA
7. Total Amount of Funds Requesting to be Disbursed by TSA
8. Electronic Funds Transfer (EFT) Banking Information (If Applicable)
9. Remittance Address
10. Certification of Requestor, including the following language: *This is to certify that the incurred costs billed were actually expended in furtherance of this Agreement, and we*

understand that intentional falsification of the information contained herein may be subject to civil and criminal penalties under applicable federal laws and/or regulations.

11. Signature of Requestor's Authorized Representative with Date
12. Name and Address of the **AIRPORT SPONSOR's** facility

The Invoice may be submitted by standard mail or by electronic transmission to the following address(s):

Billing Address: United States Coast Guard Finance Center
TSA Commercial Invoices
P.O. Box 4111
Chesapeake, VA 23327-4111

Email: FIN-SMB-TSAINVOICES@uscg.mil

Notwithstanding any other payment clause in this Agreement, the Government shall make invoice payments under the terms and conditions specified in this Article. Payment shall be considered made on the day the check is dated and deposited in the US mail, or an electronic funds transfer is completed. All days referred to in this provision are calendar days, unless otherwise specified.

C. Approval for Payment

The TSA CO and the COR are required to review and the TSA CO will approve all invoices prior to payment. To aid in this review, the **AIRPORT SPONSOR** shall provide a copy of the Summary Invoice along with all receipts, contractor pay requests and other supporting information which specify the vendor, services provided, and products delivered as well as the appropriate documentation that the **AIRPORT SPONSOR** has paid these obligations. The **AIRPORT SPONSOR** shall provide this supporting information simultaneously with Step 1 to expedite the payment process.

The Support Documentation should contain the following items:

- A summary spreadsheet providing a categorized breakdown of the amount invoiced
- Signed, approved and legible copies of each individual contractor's invoice to include schedules of values scope of work
 - Copies of contracts and change orders that provide support for the actual work being invoiced
 - Vendor and subcontractor invoices with specific details about services provided
 - Rationale for all allocations or unusual calculations or assumptions
 - Copies of subcontractor's invoices if listed on a prime contractor's invoice as a single amount (copies of timesheets and detailed backup not required if descriptions are clear and specific)
- Proof of payment by the **AIRPORT SPONSOR** for each invoice in the form of copies of check/warrants, bank wire transfers, or accounting systems transactions

The Summary Invoice and supporting documentation may be submitted by email or mail via CD or paper documents to the TSA CO, TSA COR, and other TSA representatives identified

by the TSA COR. The final closeout invoice should include proof that all required deliverables have been provided.

Upon completion of the review of the supporting documentation for the Summary Invoice, the TSA CO and COR will advise the Coast Guard Finance Center regarding payment of the Summary Invoice.

D. Final Invoice: Assignment and Release of Claims

The **AIRPORT SPONSOR** shall execute and deliver, at the time of and as a condition precedent to final payment under this OTA, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under the OTA. The release of claims includes all claims, past, present, and future, known and unknown, foreseen and unforeseen, which can be asserted by any person or persons, other than claims for property loss or damage, personal injury, or wrongful death cognizable under the Federal Tort Claims Act, 28 U.S.C. §§ 1342(b)(1), 1402(b), 2401(b), 2671-2680.

As such, the **AIRPORT SPONSOR's** final invoice requesting release/payment of retainage withheld throughout the project shall state the following:

“**[AIRPORT SPONSOR]** for and in consideration of the funding provided under OTA HSTS04-16-H-CT1219, does hereby remise, release and forever discharge Government, its officers, agents, and employees from any and all manner of actions, causes of action, rights, suits, covenants, contracts, claims, agreements, judgments and demands whatsoever by request, in law, or in equity arising from and by reason of any and all known and unknown, foreseen and unforeseen circumstances, claims or injuries and the consequences thereof, other than claims for property loss or damage, personal injury, or wrongful death cognizable under the Federal Tort Claims Act, 28 U.S.C. §§ 1342(b)(1), 1402(b), 2401(b), 2671-2680. Such claims must be asserted within the time limits and in accordance with the procedures prescribed by the Federal Tort Claims Act and the implementing regulations promulgated by the U.S. Department of Justice at 28 C.F.R. part 14. **[AIRPORT SPONSOR]** expressly waives its ability to seek additional reimbursement from the Government under OTA HSTS04-16-H-CT1219.”

E. Untimely Invoices

In furtherance of the timely closeout of this agreement, all final project invoices shall be submitted no later than six months after the period of performance end date or six months after the date of termination by either party pursuant to Article XIII (whichever is earlier). Invoices submitted later than six months after the period of performance ends or six months after the date of termination by either party, will be considered untimely and TSA cannot guarantee payment. The **AIRPORT SPONSOR** may be liable for any expenses incurred as a result of an untimely or improperly submitted invoice. TSA reserves the right to reject untimely or improperly submitted invoices.

ARTICLE IX - AUDITS

TSA shall have the right to examine or audit relevant financial records for the Project funded by this OTA, while this Agreement, or any part thereof, remains in force and effect, and for a period of three years after expiration or termination of the terms of this Agreement. For the Project funded by this OTA, the **AIRPORT SPONSOR** shall maintain all Project records and data associated with the Project while this Agreement, or any part thereof, remains in force and effect, and for a period of three years after the expiration or termination of this Agreement. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be made available for three years after any resulting final termination settlement. Records relating to appeals under the "Disputes" provision in Article XII regarding this Agreement shall be made available until such appeals are finally resolved.

As used in this provision, "records" includes books, documents and other data, regardless of type and regardless of whether such items are in written form, in the form of computer or other electronic data, or in any other form that relate to the Project funded by this OTA.

The **AIRPORT SPONSOR** shall also maintain all records and other evidence sufficient to reflect costs claimed to have been incurred for the Project funded by this OTA in the purchase of technologies allowed in the Project. The Contracting Officer, Contracting Officer's Representative, or the authorized representatives of these officers shall have the right to examine and audit those records at any time. This right of examination shall include inspection at all reasonable times at the **AIRPORT SPONSOR's** offices directly responsible for managing the Project.

The Comptroller General of the United States shall also have access to, and the right to examine, any records involving transactions related to this Agreement.

This article shall not be construed to require the **AIRPORT SPONSOR** or its contractors or subcontractors who are associated with or engaged in activities relating to this OTA, to create or maintain any record that they do not maintain in the ordinary course of business pursuant to a provision of law, provided that those entities maintain records which conform to generally accepted accounting procedures.

ARTICLE X – AUTHORIZED REPRESENTATIVES

The authorized representative for each party shall act on behalf of that party for all matters related to this Agreement. Each party's authorized representative may appoint one or more personnel to act as an authorized representative for any administrative purpose related to this Agreement, provided written notice of such appointment is made to the other party to this Agreement. The authorized representatives for the parties are as follows:

A. TSA Points of Contact:

Contracting Officer's Representative (COR):

Timothy Dulac
701 South 12th Street
Arlington, VA 20598-6025
Phone: (571) 227-3234
E-Mail: peter.donis@tsa.dhs.gov

Contracting Officer (CO):

Bonnie Evangelista
 701 South 12th Street
 Arlington, VA 20598-6025
 Phone: (571) 227-1655
 E-Mail: Bonnie.Evangelista@tsa.dhs.gov

Only the TSA CO shall have the authority to bind the Federal government with respect to scope of work, funding and liability. The TSA COR and is responsible for the technical administration of this Agreement and is the technical liaison with the **AIRPORT SPONSOR**. The TSA COR is not authorized to change the scope of work, to make any commitment or otherwise obligate the TSA, or authorize any changes which affect the liability of the TSA such as amount or level of funding. The TSA COR is authorized to approve the usage of contingency funds that fall within the funded TSA amount pursuant to Article IV.

The **AIRPORT SPONSOR** must notify the TSA CO and COR in the event that any TSA employee or TSA contracted agent takes any action that may be interpreted by the **AIRPORT SPONSOR** as direction which could increase the Project costs and could cause the **AIRPORT SPONSOR** to seek reimbursement from TSA in excess of the TSA's total reimbursement liability as defined in Articles IV and VII of this Agreement.

B. The AIRPORT SPONSOR Points of Contact:

The **AIRPORT SPONSOR** Point of Contact for all correspondence is:

Yvette M. Aehle
 St. Pete-Clearwater International Airport
 14700 Terminal Blvd., Suite 221
 Clearwater, Florida 33762
 Telephone: 727-453-7804
 Email: YAehle@fly2PIE.com

ARTICLE XI - LIMITATIONS ON LIABILITY

A. Subject to the provisions of Federal law, including the Federal Torts Claims Act, each party expressly agrees without exception or reservation that it shall be solely and exclusively liable for the acts or omissions of its own agents and/or employees and that neither party looks to the other to save or hold it harmless for the consequences of any act or omission on the part of one or more of its own agents or employees, subject to the same conditions provided above.

B. The **AIRPORT SPONSOR** has the affirmative duty to notify the TSA Contracting Officer in the event that the **AIRPORT SPONSOR** believes that any act or omission of a TSA agent or employee would increase the **AIRPORT SPONSOR** costs and cause the **AIRPORT SPONSOR** to seek compensation from TSA beyond TSA's liability as stated in Article IV "Responsibilities" or Article VII "Funding and Limitations." Claims against either party for damages of any nature whatsoever pursued under this Agreement shall be limited to direct damages not to exceed the aggregate outstanding amount of funding obligated under this Agreement at the time the dispute arises. If the **AIRPORT SPONSOR** receives any communication which it interprets as instructions to change the work encompassed in this

Agreement, or to incur costs not covered by funding obligated at that time, the **AIRPORT SPONSOR** must not act on that communication, and must contact the Contracting Officer verbally and in writing immediately.

C. In no event shall either party be liable to the other for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

D. No third party shall assert any rights under this Agreement unless expressly provided herein.

ARTICLE XII - DISPUTES

Where possible, disputes shall be resolved by informal discussion between the Contracting Officer for TSA and an authorized representative of the **AIRPORT SPONSOR**. All disputes arising under or related to this Agreement shall be resolved under this Article. Disputes, as used in this Agreement, mean a written demand or written assertion by one of the parties seeking, as a matter of right, the adjustment or interpretation of Agreement terms, or other relief arising under this Agreement. The dispute shall be made in writing and signed by a duly authorized representative of the **AIRPORT SPONSOR** or the TSA CO. At a minimum, a dispute under this Agreement shall include an **AIRPORT SPONSOR** statement of facts, adequate supporting data, and a request for relief. In the event the parties are unable to resolve any disagreement through good faith negotiations, the **AIRPORT SPONSOR** may submit the dispute to the Deputy Administrator for Acquisition. If the decision of the Deputy Administrator for Acquisition is unsatisfactory, the decision may be appealed to the TSA Assistant Administrator for Acquisition. The parties agree that the TSA Assistant Administrator for Acquisition's decision shall be final and not subject to further judicial or administrative review and shall be enforceable and binding upon the parties.

ARTICLE XIII - TERMINATION

A. In addition to any other termination rights provided by this Agreement, either party may terminate this Agreement at any time prior to its expiration date, with or without cause, by giving the other party at least thirty (30) days prior written notice of termination. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations that might require payment.

B. If the **AIRPORT SPONSOR** exercises its right under Paragraph A of this Article to withdraw voluntarily from the Project, the **AIRPORT SPONSOR** agrees to notify TSA in writing, and reimburse the United States Government for all monies disbursed to it under this Agreement up to the date of notification. If the **AIRPORT SPONSOR** has not met eligible criteria in Article VIII for any or all of the disbursements requested, the **AIRPORT SPONSOR** may petition TSA for such funding with adequate documentation.

C. If TSA chooses not to proceed with a Design Phase, TSA shall reimburse the **AIRPORT SPONSOR** for all accrued allowable, allocable, and reasonable design costs for the Design Project up to the Project stopping point, which shall not exceed the TSA funded amount of **\$753,979**. For example, if TSA elects not to proceed beyond the 30% Design Submittal Phase, then TSA shall notify the **AIRPORT SPONSOR** in writing. TSA will then reimburse the **AIRPORT SPONSOR** for all accrued allowable, allocable, and reasonable costs for the Pre-

Design Phase, Schematic Design Phase and 30% Design Submittals Phase only up to the date of notice.

D. In the event of termination or expiration of this Agreement, any TSA funds that have not been spent or incurred for allowable expenses prior to the date of termination and are not reasonably necessary to cover termination expenses will be returned and/or de-obligated from this Agreement.

ARTICLE XIV - CHANGES AND/OR MODIFICATIONS

Changes or modifications to this Agreement shall be in writing and signed by the TSA Contracting Officer and the authorized representative of the **AIRPORT SPONSOR**. The modification shall cite the subject provision to this Agreement and shall document the exact nature of the modification. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this Agreement. The properly signed written modification shall be attached to this Agreement and thereby becomes a part of this Agreement.

The TSA CO reserves the right to make unilateral modifications (signed only by the TSA CO) for administrative modifications, such as changes to the line of accounting in Article VII, updates to TSA POCs in Article X, and/or other administrative changes that do not affect the terms and conditions of this Agreement.

ARTICLE XV - CONSTRUCTION OF THE AGREEMENT

This Agreement is issued under 49 U.S.C. §106 (l)(6) and §114(m) and is not a procurement contract, grant, cooperative agreement, or other financial assistance. It is not intended to be, nor shall it be construed as, a partnership, corporation, or other business organization. Both parties agree to provide their best efforts to achieve the objectives of this Agreement. Additionally, each party acknowledges that all parties hereto participated equally in the negotiation and drafting of this Agreement and any amendments thereto, and that, accordingly, this Agreement shall not be construed more stringently against one party than against the other. The Agreement constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, understanding, negotiations and discussions whether oral or written of the parties. Each party acknowledges that there are no exceptions taken or reserved under this Agreement.

In the event that any Article and/or parts of this Agreement are determined to be void or otherwise invalid or unenforceable, such Article or portions thereof shall lapse. No such lapse will affect the rights, responsibilities, and obligations of the parties under this Agreement, except as provided therein. If either party determines that such lapse has or may have a material effect on the performance of the Agreement, such party shall promptly notify the other party, and shall negotiate in good faith a mutually acceptable amendment to the Agreement if appropriate to address the effect of the lapse.

ARTICLE XVI - PROTECTION OF INFORMATION

The parties agree that they shall take appropriate measures to protect proprietary, privileged, confidential, or otherwise Sensitive Security Information (SSI) that may come into their possession as a result of this Agreement.

A. RELEASE OF TECHNICAL DATA

No SSI or other information, oral or written, concerning the scope of this Agreement shall be published or released to the public without the prior written approval of the TSA Assistant Secretary or his or her designee.

B. RECORDS AND RELEASE OF INFORMATION

All SSI, as defined in 49 CFR Part 1520, shall be handled in accordance with TSA policies and regulations. All employees, contractors, and subcontractors assigned to work under this Agreement are subject to the provisions of 49 CFR Part 1520, Protection of Sensitive Security Information. SSI may not be disclosed except in accordance with the provisions of that rule.

C. MEDIA

All media releases and other contact with or by media related to this Agreement and in accordance with the terms of this Agreement shall be referred to the Contracting Officer. Neither the **AIRPORT SPONSOR**, nor its contractors, shall include in its publicity or public affairs activities related to the subject matter of this Agreement any SSI unless written approval has been received from the TSA Office of Security Capabilities or the TSA Office of Strategic Communication and Public Affairs.

ARTICLE XVII – SURVIVAL OF PROVISIONS

The following provisions of this Agreement shall survive the termination of this Agreement: Article IV –Responsibilities; Article VII – Funding and Limitations; Article IX – Audits; Article XI – Limitations on Liability; Article XII – Disputes; Article XVI – Protection of Information; and Article XVII – Survival of Provisions.

APPENDICES

Appendix A – Project Milestone Schedule
 Appendix B – Schedule of Deliverables
 Appendix C – Financial Reporting Template

Appendix A
Project Milestone Schedule

Design Services Milestones	Estimated Completion Dates [Dates to Be Filled In]
Pre-Design Phase Deliverables:	
Schematic Design Deliverables	
30% TSA Design Deliverables	
70% TSA Design Deliverables	
100% TSA Design Deliverables	
Final Construction Drawings	
Construction Bid Proposal Documentation	

APPENDIX B
Schedule of Deliverables

The following deliverables are required to be submitted by **the AIRPORT SPONSOR**.

Item	Deliverable	Submitted To:	Frequency or Due Date
1	Schedule provided in Appendix A (Project Milestones for Design and proposed Construction)	TSA COR, OSTCBD@tsa.dhs.gov and TSA Contracting Officer	Within 10 calendar days of the AIRPORT SPONSOR awarding the design contract. Updates submitted with monthly TSA Project Report (Item 7).
2	Pre-Design Phase, Schematic, 30%, 70% and 100% Design deliverables	TSA COR, OSTCBD@tsa.dhs.gov	In accordance with the project milestone schedule.
3	Construction Bid Information (prospective winning bidder and bid package)	TSA COR, TSA Contracting Officer, OSTCBD@tsa.dhs.gov	When selection of prospective winning bidder is complete.
4	Design Contract Schedule of Fees	TSA COR, TSA Contracting Officer, OSTCBD@tsa.dhs.gov	Within 10 calendar days of the AIRPORT SPONSOR awarding the design contract.
5	Copies of the Design Contract(s) and Change Orders	TSA COR, TSA Contracting Officer. OSTCBD@tsa.dhs.gov	As required. Change Orders require TSA approval in accordance with Section A.6 of Article IV.
6	Monthly Project Report	TSA COR, OSTCBD@tsa.dhs.gov	By the 10 th of each month. Electronic submission is requested.
7	Financial Reporting Template (Appendix C)	TSA COR, OSTCBD@tsa.dhs.gov and TSA Contracting Officer	Monthly
8	Invoices	TSA COR , TSA Contracting Officer, OSTCBD@tsa.dhs.gov	Monthly
9	Final Invoice	TSA COR , TSA Contracting Officer, OSTCBD@tsa.dhs.gov	No later than 90 days after completion of the CBIS Construction Project.

The Monthly Project Report is to be submitted by the 10th of each month. A draft Monthly report template will be submitted via separate correspondence. The Monthly Milestone and Project Report shall address the following:

- a. Actual start and/or finish dates for updated/completed activities.
- b. Remaining duration, required to complete each activity started, or scheduled to start, but not completed
- c. The Project's progress to include Project Percent Completion; a forecast the Project completion date and final costs; as well as monthly schedule and budget variances throughout the Project.
- d. Percentage for completed and partially completed activities.
- e. Any CO approved changes including but not limited to new activities, deleted activities, activity duration changes, and change in logic relationships between activities.
- f. Status date for the schedule update.
- g. A statement that identifies and describes any current or anticipated delays that includes the following information: identification of the delayed activity by description and activity code; type of delay; cause of the delay; effect of the delay on other activities, milestones, and completion dates; identification of actions needed to avoid or mitigate the delay.
- h. Description of lessons learned
- i. Project Schedule in both PDF and "live"/usable format to depict the critical path, baseline and actual date information; predecessors/successors and shall be broken down to a minimum of three (3) WBS levels where applicable.

The Project schedule will be used for all planned TSA activities.

Appendix C Financial Reporting Template

Name of ENTITY: _____

OTA Number: _____

Government Fiscal Year: _____

Month being reported: _____

1. Total Amount of OTA	
2. Total Expenses Incurred	
a. Payments received from TSA	
b. Amount Invoiced but not Received	
c. Amounts Incurred but not Invoiced	
3. Remaining Balance of OTA	

Invoices Submitted But Not Yet Paid

Invoice Number	Date Submitted	Amount
Total (should agree with 2.b.)		

Printed Name_____
Signature_____
Title_____
Date_____
E-Mail Address_____
Phone Number