



Airport

DATE: June 11, 2024

FROM: Greg Haug, Airport Director

ITEM: TSA National Amendment 23-02 Aviation Worker Screening

REQUEST:

Consider funding request for appeal of Transportation Security Administration (TSA) National Amendment 23-02 Aviation Worker Screening

BACKGROUND INFORMATION:

On April 27, 2023, TSA issued National Amendment (N/A) 23-02 – Aviation Worker Screening, which is designed to deter insider threat at airports across the country. Specifically, this NA requires Bismarck Airport staff to develop, hire, train, equip and administer a screening program for aviation workers by September 25, 2024. This NA would require Bismarck Airport to replicate the screening process TSA currently has in place at the checkpoint and utilize this same process at aviation worker entry point(s) at the terminal. Aviation workers include personnel from the airlines, airport, TSA, concessionaires, and any other personnel that enter the restricted portions of the airport terminal. Airport staff is supportive of efforts to reduce insider threats but feels strongly that screening activities should remain solely with TSA.

In September 2023, the City Commission approved Airport staff to join into a national lawsuit to appeal National Amendment 23-02 and authorized up to \$10,000 for this purpose. In total, there are sixteen airports and one national organization participating in the lawsuit. Since beginning the lawsuit, the legal team has met with the airports to discuss strategy and provide updates, drafted the necessary legal briefs and submitted them to the court and has responded to the court appropriately. Additionally, the legal team met with TSA leadership to discuss voluntarily issuing a stay for the NA, which TSA did not do and to conduct mediation with TSA which, unfortunately, did not provide a resolution to the lawsuit.

The discussions with TSA are the two primary reasons for the additional costs. Both items were unanticipated and resulted in additional work to file a motion to stay the NA's implementation date which extended the briefing schedule and to participate in an extended, court supervised mediation process with multiple meetings with the mediators, Department of Justice and TSA. The additional meetings with TSA, the mediation and extra work to file a motion to stay were needed because it became apparent during the initial phases of the litigation that the court's determination would not be known until after the implementation date of September 25, 2024.

Originally, the legal team thought that \$10,000 per airport would be enough to cover the costs of litigation, but unfortunately the unanticipated tasks to meet with TSA added costs to the initial

phase of litigation. With items now complete, the legal team anticipates the last remaining task to be oral arguments, which will likely take place in the fall. With only oral arguments remaining, the legal team estimates an additional need of approximately \$6,500 per airport to complete the lawsuit. This would bring the total cost of litigation to approximately \$16,500 per airport in the lawsuit.

Airport Staff requests the City Commission approve an additional \$10,000 to fund the airport's share of the litigation. The additional funding would pay for the \$6,500 estimate to complete the litigation plus any incidentals that may arise near the end of the lawsuit. The funding is available in the airport's spending plan.

RECOMMENDED CITY COMMISSION ACTION:

1. Authorize \$6,500 - \$10,000 to cover additional litigation expenses.

STAFF CONTACT INFORMATION:

Greg Haug, Airport Director, 701-355-1805, ghaug@bismarcknd.gov

ATTACHMENTS:

1. TSA National Amendment 23-02

From: David Mackey <dmackey@andersonkreiger.com>
Sent: Wednesday, May 22, 2024 9:16 PM
To: Matthew Remyse <mremynse@bismarcknd.gov>
Cc: Erica Brennon <brennon@andersonkreiger.com>; Gregory Haug <ghaug@bismarcknd.gov>
Subject: A & K Invoice for Services Rendered in April 2024

CAUTION: *External Email - Use caution clicking links or opening attachments*****

Dear Matthew:

I've enclosed A & K's invoice for services rendered in the Aviation Worker Screening Matter in April, 2024. Bismarck's share of the \$40,481.42 total is \$2530.09.

As you've pointed out, we've exceeded the \$10,000 budget that we provided to you at the outset of the case. There are two primary reasons for that: the need to file a motion to stay the NA's implementation date given the delay in access to the administrative record and the subsequent extensions in the briefing schedule, as well as an extended, court supervised mediation process with multiple meetings with the mediators, DOJ and TSA (which ended up being fruitless.)

The briefing of the motion to stay and the briefing on the merits is now concluded, and we anticipate the last remaining task is oral argument, which will likely take place in the fall. Barring unexpected developments, I believe the total cost to each airport petitioner for the prosecution of the appeal will exceed our initial budget by about \$6,500, for a total cost to each airport petitioner of about \$16,500.

I hope this is helpful. Please let me know if you have questions or would like to discuss.

Regards,

Dave

ANDERSON David S. Mackey (he/him/his)
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