



SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY
STAFF REPORT

Item No.
21

Meeting Date: **SEPTEMBER 6, 2012**

Subject:

Approve and Authorize the President/CEO to Execute a Sixth Amendment to the Agreement with McKenna Long & Aldridge, LLP

Recommendation:

Adopt Resolution No. 2012-0099, approving and authorizing the President/CEO to execute a Sixth Amendment to the Agreement for Professional Legal Services between the Authority and McKenna Long & Aldridge LLP, increasing the compensation by \$500,000 for a total not-to-exceed compensation amount of \$1,600,000.

Background/Justification:

On August 1, 2009, the Authority entered into a professional legal services Agreement with Luce, Forward, Hamilton & Scripps, LLP ("Luce Forward") to provide general legal services related to a broad range of issues as directed by the Authority's General Counsel. The term of the Agreement was one year with two one-year options to renew and the maximum amount of compensation was \$300,000. The First Amendment to the Agreement exercised the first one-year option resulting in an extension of the term to expire no later than July 31, 2011. The Second Amendment to the Agreement exercised the second one-year option resulting in an expiration date no later than July 31, 2012. On October 6, 2011, the Board approved the Third Amendment which increased the compensation amount by \$500,000 as a result of the ongoing litigation entitled *West Tech Contractors, Inc. v. San Diego County Regional Airport Authority*, San Diego Superior Court Case No. 37-2010-0010656-CU-BC-CTL (the "Litigation"). On March 1, 2012, the Board approved the Fourth Amendment which increased the compensation amount by \$300,000 due to the Litigation and extended the term for one year to terminate no later than July 31, 2013. On March 26, 2012, the parties executed the fifth Amendment which memorialized the name change of Luce Forward to McKenna Long & Aldridge LLP ("McKenna").

McKenna is representing the Authority in the Litigation which involved a six week jury trial and post trial motions. The Litigation, thus far has involved:

- Digitizing over 110,000 hard copy documents, and over 62 gigabytes of electronically stored information ("ESI") processing, including over 100,000 pages of documents, over 3,600 emails, and over 259 audio recordings;

000190

- responding to West Tech's four sets of form interrogatories, three sets of special interrogatories, three sets of document requests, and three sets of requests for admissions, and requests to supplement the discovery immediately prior to trial;
- approximately 30 deposition sessions of percipient witnesses (two witnesses required extraordinary work because they were outside the jurisdiction of California);
- approximately seven third party subpoenas seeking production of documents;
- approximately seven expert witness deposition sessions;
- West Tech prepared four motions for summary judgment/adjudication and the Airport filed one motion for summary adjudication;
- at the initial trial readiness conference, West Tech identified over 100 witnesses and the parties identified over 1,000 trial exhibits;
- approximately 22 motions in limine;
- approximately 21 full or partial day trial sessions during June and July;
- three motions for directed verdict; and,
- additional briefing during the trial at the request of the Court.

Additional compensation is needed to allow Law Firm to continue representing the Authority in the Litigation. The following post trial motions have been filed:

- Authority's Motion for Prevailing Party Attorney's fees;
- Authority's Motion for New Trial

Fiscal Impact:

Adequate funds for this Agreement are included in the FY2013 budget under the contractual services line item.

Authority Strategies:

This item supports one or more of the Authority Strategies, as follows:

- Community Strategy
 Customer Strategy
 Employee Strategy
 Financial Strategy
 Operations Strategy

Environmental Review:

- A. This Board action is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act (CEQA), as amended. 14 Cal. Code Regs. §15378. This Board action is not a "project" subject to CEQA, Pub. Res. Code §21065.
- B. California Coastal Act Review: This Board action is not a "development" as defined by the California Coastal Act. Cal. Pub. Res. Code §30106.

Equal Opportunity Program:

The Authority's small business program promotes the use of small, local, disadvantaged, and other business enterprises, on all contracts, to provide equal opportunity for qualified firms. By providing education programs, making resources available, and communicating through effective outreach, the Authority strives for diversity in all contracting opportunities.

The Authority has a Disadvantaged Business Enterprise ("DBE") Plan as required by the Department of Transportation, 49 CFR Part 26. The DBE Plan calls for the Authority to submit an annual over-all goal for DBE participation on all federally funded projects.

This project does not use federal funds; therefore, it will not be applied toward the Authority's over-all DBE goal.

Prepared by:

AMY GONZALEZ
SENIOR DIRECTOR, COUNSEL SERVICES

000192

RESOLUTION NO. 2012-0099

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY APPROVING AND AUTHORIZING THE PRESIDENT/CEO TO EXECUTE A SIXTH AMENDMENT TO THE AGREEMENT FOR PROFESSIONAL LEGAL SERVICES BETWEEN THE AUTHORITY AND MCKENNA LONG & ALDRIDGE LLP, INCREASING THE COMPENSATION BY \$500,000 FOR A TOTAL NOT TO EXCEED COMPENSATION AMOUNT OF \$1,600,000

WHEREAS, on August 1, 2009, the Authority entered into a professional legal services Agreement with Luce, Forward, Hamilton & Scripps, LLP ("Luce Forward") to provide general legal services related to a broad range of issues as directed by the Authority's General Counsel; and

WHEREAS, the term of the Agreement was one year with two one-year options to renew and the amount of compensation was \$300,000; and

WHEREAS, the First Amendment to the Agreement exercised the first one-year option resulting in an extension of the term to expire no later than July 31, 2011, the Second Amendment to the Agreement exercised the second one-year option resulting in an expiration date no later than July 31, 2012, the Third Amendment increased the compensation by \$500,000; the Fourth Amendment increased the compensation by \$300,000 and extended the term for one year resulting in an expiration date no later than July 31, 2013, and the Fifth Amendment memorialized the name change of Luce Forward to McKenna Long & Aldridge LLP ("Law Firm"); and

WHEREAS, this Sixth Amendment is needed to increase the compensation amount as a result of the litigation entitled *West Tech Contractors, Inc. v. San Diego County Regional Airport Authority*, San Diego Superior Court Case No. 37-2010-0010656-CU-BC-CTL (the "Litigation"); and

WHEREAS, Law Firm is representing the Authority in the Litigation which involved a six week trial and post trial motions; and

NOW THEREFORE BE IT RESOLVED that the Board hereby approves and authorizes the President/CEO to execute a Sixth Amendment to the Agreement for professional legal services between the Authority and McKenna Long & Aldridge LLP, increasing the compensation amount by \$500,000 for a total not to exceed compensation amount of \$1,600,000; and

BE IT FURTHER RESOLVED that this Board action is not a project" as defined by the California Environmental Quality Act (CEQA), Cal. Pub. Res. Code §21065; nor is it a "development" as defined by the California Coastal Act, Cal. Pub. Res. Code §30106.

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a special meeting this 6th day of September, 2012, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

TONY R. RUSSELL
DIRECTOR, CORPORATE SERVICES/
AUTHORITY CLERK

APPROVED AS TO FORM:

BRETON K. LOBNER
GENERAL COUNSEL

000194