Title: Supplemental Agreement: Sacramento Valley Station Project Litigation

Location: Sacramento Valley Station, District 3

Recommendation: Pass a Motion authorizing the City Attorney or City Attorney’s designee to execute Supplemental Agreement No. 1 with Murphy Austin in an amount not to exceed $400,000, for a revised total not-to-exceed amount of $550,000 for legal support services.

Contact: Nick Theocharides, Engineering Services Manager, (916) 808-5065, Department of Public Works; Katherine Underwood, Senior Deputy City Attorney, Office of the City Attorney

Presenter: None

Attachments:
1-Description/Analysis
2-Exhibit A: Supplemental Agreement
Description/Analysis

Issue Detail: In January 2008, the City contracted with TranSystems Corporation for the design of the Sacramento Valley Station. In March 2011, the City entered into a separate contract with TranSystems for design support services during construction of the project. In March 2011, the City entered into contracts with Granite Construction Company for the construction of the project and with Vali Cooper & Associates, Inc. as construction manager.

In July 2012, shortly after the completion of construction, the concrete surfaces of both 1000-foot long passenger platforms began to crack excessively in the slab-on-grade and structural slab areas. Additionally, cracks in the stucco ceiling of the ramps from the platform to the tunnel below have developed and there is water intrusion at the canopy column bases along the ramps. Furthermore, the vestibules below the platforms were not waterproofed, so water leaks into the tunnels. The City was not able to reach agreement among the parties involved in design and construction of the project to address the defective concrete, so the Council authorized filing litigation.

Construction litigation involves technical knowledge of the design process, the construction process, the roles of design professionals, contractors and subcontractors and an understanding of the relationships between those parties. The complexity of construction litigation increases with the value of the case and the number of parties involved. This case presently involves the City as the Plaintiff and the following five defendants involved in the design and/or construction of the project: TranSystems Corporation; Granite Construction Company; Vali Cooper & Associates, Inc.; CMC Steel Fabricators Inc. dba CMC Rebar; and Cemex Construction Materials Pacific, LLC.

The prosecution of complex construction matters requires consultation to put the City in the best position to prevail on all of the claims. The Murphy Austin firm participated in the City Attorney’s request for proposal and was selected through a competitive process and review of professional services. Murphy Austin is a local firm that specializes in prosecuting complex construction defect matters on behalf of property owners, including public entities. On October 31, 2017, the City Council authorized the City Attorney to enter into an agreement with Murphy Austin for legal services in the amount of $150,000.

The City Attorney’s Office remains actively involved in the prosecution of this case, but the continued assistance of Murphy Austin in the pre-trial phase of this litigation is crucial to put the City in the best position to succeed. The pre-trial phase of the case requires significantly more discovery preparation and an additional $400,000 in supplemental legal services is needed to complete pre-trial preparation.
**Policy Considerations:** This action responds to the requirement for City Council approval of all agreements or amendments over $100,000.

**Economic Impacts:** Not applicable.

**Environmental Considerations:** Executing an agreement for a professional services contract is not considered a project as defined by Section 15378(a) of the California Environmental Quality Act guidelines. The recommended action involves no physical construction and has no potential to cause significant impact to the environment.

**Sustainability:** None

**Commission/Committee Action:** None

**Rationale for Recommendation:** Authorization of the supplemental agreement with Murphy Austin is necessary to complete the pre-trial phase of the litigation.

**Financial Considerations:** Supplemental Agreement No. 1 to City Agreement 2017-1344 will increase the total contract amount by $400,000, with a revised total contract amount not to exceed $550,000. There is sufficient funding available in the Measure A Fund (Fund 2023) of the Intermodal Transportation Facilities Program (T15029000) to execute Supplemental Agreement No. 1 with Murphy Austin in an amount not to exceed $400,000.

**Local Business Enterprise (LBE):** The Murphy Austin firm is an LBE and meets the 5% LBE participation requirement.
SUPPLEMENTAL AGREEMENT

The City of Sacramento ("City") and Murphy Austin Adams Schoenfeld, LLP ("Contractor"), as parties to that certain Legal Services Agreement designated as Agreement Number 2017-1344, including any and all prior supplemental agreements modifying the agreement (the agreement and supplemental agreements are hereafter collectively referred to as the "Agreement"), hereby supplement and modify the Agreement as follows:

1. The scope of Services specified in Exhibit A of the Agreement is amended as follows:

   The original contract only included pre-trial advice and assistance. This contract is intended to capture additional necessary pre-trial work, including substantial written discovery and fact witness depositions.

2. The term of this agreement is amended as follows:

   There is no change in the term of the agreement.

3. In consideration of the additional and/or revised services described in section 1 and 2, above, the maximum not-to-exceed amount that is specified in Exhibit B of the Agreement for payment of Contractor’s fees and expenses, is increased by $400,000, and the Agreement’s maximum not-to-exceed amount is amended as follows:

   Agreement’s original not-to-exceed amount: $150,000
   Not change by previous supplemental agreements: $0
   Not-to-exceed amount prior to this supplemental agreement: $150,000
   Increase by this supplemental agreement: $400,000
   New not-to exceed amount including all supplemental agreements: $550,000

4. Contractor agrees that the amount of increase or decrease in the not-to-exceed amount specified in section 2, above, shall constitute full compensation for the additional and/or revised services specified in section 1, above, and shall fully compensate Contractor for any and all direct and indirect costs that may be incurred by Contractor in connection with such additional and/or revised services, including costs associated with any changes and/or delays in work schedules or in the performance of other services or work by Contractor.

5. Contractor warrants and represents that the person or persons executing this supplemental agreement on behalf of Contractor has or have been duly authorized by Contractor to sign this supplemental agreement and bind Contractor to the terms hereof.

6. Except as specifically revised herein, all terms and conditions of the Agreement shall remain in full force and effect, and Contractor shall perform all of the services, duties, obligations, and conditions required under the Agreement, as supplemented and modified by this supplemental agreement.

Approval Recommended By: 
Sandra Talbott, Assistant City Attorney

Approved by Murphy Austin Adams Schoenfeld, LLP:
J. Scott Alexander, Partner

Approved by City of Sacramento:
Susana Alcala Wood, City Attorney

Approved As To Form By:
Katherine Underwood,
Senior Deputy City Attorney

Attested To By:
Sacramento City Clerk