



REPORT TO COUNCIL

City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www. CityofSacramento.org

CONSENT
October 13, 2009

**Honorable Mayor and
Members of the City Council**

**Title: APPROVING SECOND AMENDMENT TO AGREEMENT FOR LEGAL SERVICES FOR
SACRAMENTO INTERMODAL TRANSPORTATION FACILITY SITE ACQUISITION
(T15029001)**

Location/Council District: Downtown next to Sacramento Valley Station between I
Street bridge and 7th Street (District 1)

Recommendation: Adopt a **Resolution** Approving the Second Amendment to
Agreement for Legal Services (City Agreement No. 2007-0579) with Miller, Owen &
Trost for Sacramento Intermodal Transportation Facility Site Acquisition (T15029001)
increasing the agreement by \$125,000 for a total consideration in an amount not to
exceed \$575,000.

Contact: Sheryl Patterson, Senior Deputy City Attorney 808-5346

Presenters: NA

Department: Office of the City Attorney

Division: NA

Organization No: 03000

Description/Analysis

Issue: Whether to amend the agreement with Miller, Owen & Trost (MOT) to allow
for outside counsel to contract with the appraisers and other consultants
previously hired by the City to support the upcoming arbitration regarding the
valuation of Railyards Parcels A and B for the Sacramento Intermodal
Transportation Facility (SITF). The prior City contracts with the appraisers and
consultants have expired and it is preferable for MOT to place them under
contract to prepare for the upcoming arbitration so MOT can direct their work and
maintain confidentiality.

The total consideration in the existing MOT contract is \$450,000. Because the negotiation and mediation steps called for in the Purchase and Sale Agreement between the City and S. Thomas Enterprises of Sacramento, LLC (Thomas) did not occur based on mutual agreement of the parties, the MOT contract has excess funding. In order to engage the appraisers and consultants to prepare for the arbitration, an additional \$247,500 is needed to fund those costs. By permitting MOT to contract with those firms and apply the excess funds towards those costs, the amount of the additional consideration needed at this time is \$125,000. It is uncertain what the actual costs will be for the legal services and expert witnesses because the parties have not yet agreed on an arbitrator, set the hearing dates, nor commenced discovery. In addition, the parties have to split the costs of the arbitrator.

Policy Considerations: The proposed action to facilitate implementation of the SITF are consistent with the City's 2030 General Plan to promote development of an integrated, multi-modal transportation system to reduce air pollution and greenhouse gases.

Environmental Considerations:

California Environmental Quality Act (CEQA): Under the California Environmental Quality Act (CEQA) guidelines, continuing administrative activities do not constitute a project and are therefore exempt from review.

Sustainability Considerations: The SITF project will provide facilities to accommodate rail freight movement, heavy passenger rail trains, light rail transit, intercity and local buses, and taxis, as well as bicycle and pedestrian transportation modes. The improvements are consistent with the City's sustainability goals to provide better accessibility to public transportation.

Other: None.

Commission/Committee Action: None.

Rationale for Recommendation: Amending the existing legal services contract to fund the costs for the arbitration is needed to complete acquisition of the Intermodal facility site so that the Track Relocation Project (T15029005) construction can commence early next year in accordance with the federal and state grant funding program commitments.

Financial Considerations: The current Legal Services Agreement is for an amount not to exceed \$450,000. Based on current estimates the costs for attorneys work through the anticipated hearing date in November, appraisers and expert witness costs to prepare for the hearing will be approximately \$400,000. As of October 6, 2009 the Sacramento Intermodal Transportation Facility Site Acquisition Project (PN: T15029001) has a total budget of \$56,479,500 and an unobligated budget of \$125,122, which is sufficient to increase the agreement for legal services (City Agreement No. 2007-0579) with Miller, Owen & Trost by \$125,000.

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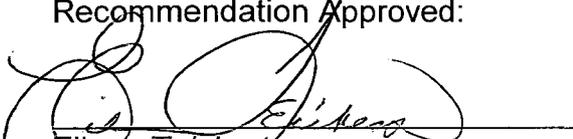
Emerging Small Business Development (ESBD): The proposed action allows for rehiring prior appraiser and consultants who prepared reports to support the Intermodal Site Acquisition Project, and so there are no opportunities to contract with ESBD.

Respectfully Submitted by:



Sheryl Patterson
Senior Deputy City Attorney

Recommendation Approved:


Eileen Teichert
City Attorney

Attachments

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Attachment 1

RESOLUTION NO.

Adopted by the Sacramento City Council

**APPROVING SECOND AMENDMENT TO AGREEMENT FOR
LEGAL SERVICES WITH MILLER, OWEN & TROST
FOR SACRAMENTO INTERMODAL TRANSPORTATION
FACILITY SITE ACQUISITION (T15029001).**

BACKGROUND

- A. The City Attorney approved an Agreement for Legal Services, City Agreement No. 2007-0579, with Miller Owen and Trost for the Sacramento Intermodal Transportation Facility Site Acquisition Project (T15029001) in January 25, 2007. On May 6, 2008, the City Council approved amending that agreement to increase the total consideration to \$450,000.
- B. There is a need to re-engage the two appraisers and all of the consultants who prepared reports regarding the valuation of the Railyards Parcels A and B to serve as expert witnesses at the upcoming arbitration hearing. Since there is excess funding under the Agreement for Legal Services and it is preferable if those appraisers and consultants were directly under contract to our outside counsel, it is desirable to amend the existing Agreement for Legal Services to allow for such subcontracting and to increase the total consideration by \$125,000, for a revised total amount not to exceed \$575,000.
- C. There are adequate funds available in the Sacramento Intermodal Transportation Facility Site Acquisition Project (T15029001) for the proposed amendment.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL
RESOLVES AS FOLLOWS:**

- Section 1. The City Attorney is authorized to execute the Second Amendment to Agreement for Legal Services (City Agreement No. 2007-0579) with Miller, Owen & Trost for the Sacramento Intermodal Transportation Facility Site Acquisition Project (T15029001) to increase the total consideration by \$125,000, for a total amount not to exceed \$575,000, and to allow for Miller, Owen & Trost to contract with the appraisers and consultants who prepared reports related to the valuation of the Railyards Parcels A and B to support the upcoming arbitration.
- Section 2. The City Attorney's authority for City Agreement No. 2007-0579 is hereby reset.