



# CITY OF SANTA BARBARA

## COUNCIL AGENDA REPORT

**AGENDA DATE:** August 5, 2014

**TO:** Mayor and Councilmembers

**FROM:** Airport Administration, Airport Department

**SUBJECT:** Amendment To Agreement With Kaplan, Kirsch & Rockwell, LLP, For Legal Services

**RECOMMENDATION:** That Council:

- A. Authorize the Airport Director to execute an amendment to Contract No. 24,535 with Kaplan, Kirsch & Rockwell, LLP, to amend the Compensation and Costs provision, increasing the contract amount from \$45,000 to \$50,000; and
- B. Approve the allocation of Fiscal Year 2014 appropriations from the Runway 15R-33L Pavement Rehab Project to fund the reimbursement of disallowed FAA grant expenditures totaling \$83,268.22.

### **DISCUSSION:**

#### Background

On May 9, 2013, the Airport received a notice from the Federal Aviation Administration (FAA) that the FAA had issued a preliminary determination that some of the electrical equipment used in the construction of the Airline Terminal project did not comply with federal law (the Buy America Act) and directed the City to provide a corrective action plan to ensure compliance with grant assurances and to repay federal funds (\$1,063,716) used for the improperly funded electrical equipment. On June 4, 2013, staff met with Council in closed session to discuss potential litigation.

#### City Response and Steps Taken

City staff disagreed with the allegations and requested authorization to retain outside Counsel, Kaplan, Kirsch & Rockwell LLP, to assist with its review and response to the allegations. With assistance from outside counsel, staff undertook a thorough investigation of the identified electrical products, including the bidding process and contract requirements, any requests by subcontractors for product substitutions, and obtained verification from subcontractors of all manufacturers of the domestic content and fabrication for each product.

On December 9, 2013, a formal response was filed with FAA with the results of the City's investigation. The investigation found that \$976,065 of the total product cost complied with the Buy America Act and would have qualified for a "type 3" 60%-U.S. final assembly waiver, and as such the costs were AIP-eligible and did not require repayment.

The investigation also determined that certain products did not comply and the City notified FAA that the Airport would repay the AIP grant for 95% of ineligible costs, or \$83,268.

#### Resolution of Complaint

On June 27, 2014, the FAA responded that based on the written correspondence and documentation, FAA accepts that the City understands its Buy America Act requirements and has a program in place to reasonably ensure Buy America Act compliance going forward.

Additionally, FAA concurred with the City's investigation regarding the compliance and non-compliance of electrical products with Buy America requirements. "After further consultation within the FAA, review of the statements of the City with regard to its Buy America compliance program going forward; and extensive consultation with the City with regard to its commitment to proper procurement, we determine that these costs are not recoverable. The costs (\$976,065.48) are for items **eligible** under the AIP and satisfy AIP Buy America requirements."

The identified electrical items that did not comply are considered improper payments under AIP and the funds must be returned to FAA. The total amount to be refunded is 95% of \$87,650.76, or \$83,268.22. There are funds available in the Runway 15R-33L Pavement Rehab Project, which is a completed project.

Due to the lengthy delay in receiving a response from the FAA, additional legal fees were incurred by Kaplan Kirsch & Rockwell, LLP, in the amount of \$5,000.

#### **BUDGET/FINANCIAL INFORMATION:**

Funds for the contract amendment are available in the Airport Department's Fiscal Year 2015 Operating Fund budget.

**SUBMITTED BY:** Hazel Johns, Airport Director

**APPROVED BY:** City Administrator's Office