



Legislation Details (With Text)

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**File created:** 1/15/2020    **In control:** Board of Port Commissioners

**On agenda:** 2/11/2020    **Final action:** 2/11/2020

**Title:** RESOLUTION AUTHORIZING THE GENERAL COUNSEL TO EXECUTE AMENDMENT NO. 2 TO THE AGREEMENT FOR EXPERT LEGAL SERVICES WITH KLEINFELDER, INC. INCREASING THE MAXIMUM AMOUNT BY \$90,000 FROM \$275,000 TO \$365,000, AMENDMENT NO. 3 TO THE AGREEMENT FOR EXPERT LEGAL SERVICES WITH WINDWARD ENVIRONMENTAL, LLC. INCREASING THE MAXIMUM AMOUNT BY \$60,000 FROM \$330,000 TO \$390,000, AND AMENDMENT NO. 1 TO THE AGREEMENT FOR LEGAL SERVICES WITH COLANTUONO, HIGHSMITH & WHATLEY, P.C. INCREASING THE MAXIMUM AMOUNT BY \$120,000 FROM \$175,000 TO \$295,000. FY 2020 EXPENDITURES ARE BUDGETED.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. 12. 2020-0009 Draft Resolution

Date	Ver.	Action By	Action	Result
2/11/2020	1	Board of Port Commissioners	adopted	

**DATE:** February 11, 2020

**SUBJECT:**

**RESOLUTION AUTHORIZING THE GENERAL COUNSEL TO EXECUTE AMENDMENT NO. 2 TO THE AGREEMENT FOR EXPERT LEGAL SERVICES WITH KLEINFELDER, INC. INCREASING THE MAXIMUM AMOUNT BY \$90,000 FROM \$275,000 TO \$365,000, AMENDMENT NO. 3 TO THE AGREEMENT FOR EXPERT LEGAL SERVICES WITH WINDWARD ENVIRONMENTAL, LLC. INCREASING THE MAXIMUM AMOUNT BY \$60,000 FROM \$330,000 TO \$390,000, AND AMENDMENT NO. 1 TO THE AGREEMENT FOR LEGAL SERVICES WITH COLANTUONO, HIGHSMITH & WHATLEY, P.C. INCREASING THE MAXIMUM AMOUNT BY \$120,000 FROM \$175,000 TO \$295,000. FY 2020 EXPENDITURES ARE BUDGETED.**

**EXECUTIVE SUMMARY:**

The Office of the General Counsel is responsible for providing legal advice and representation to the Board of Port Commissioners, the CEO and executive team, as well as all departments of the District. This includes defending the District in litigation and administrative procedures, as well as advising the District on transactions, policies and other matters. In order to best advise and defend the District, in addition to the in-house attorneys, the Office of the General Counsel sometimes utilizes the services of outside law firms and experts to provide legal and consultant services in specific areas of law and to supplement the services of the in-house resources. This agenda seeks Board approval of authorization for the General Counsel to execute an amendment to the expert legal services agreement with Kleinfelder, Inc. adding \$90,000 to the current not-to-exceed amount of \$275,000 for a new total of \$365,000, an amendment to the expert legal services agreement with

Windward Environmental, LLC, increasing the maximum amount by \$60,000 from \$330,000 to \$390,000, and an amendment to the outside counsel agreement with Colantuono, Highsmith & Whatley, P.C. adding \$120,000 to the current not-to-exceed amount of \$175,000 for a new total of \$295,000. Details regarding the specific matters for which these amendments are proposed are protected by the attorney/client and work product privileges and are discussed in separate confidential attorney-client privileged memoranda to the Board.

### **RECOMMENDATION:**

Adopt a Resolution authorizing the General Counsel to execute Amendment No. 2 to the expert legal services agreement with Kleinfelder, Inc. adding \$90,000 to the current not-to-exceed amount of \$275,000 for a new total of \$365,000, Amendment No. 3 to the agreement for expert legal services with Windward Environmental, LLC, increasing the maximum amount by \$60,000 from \$330,000 to \$390,000, and Amendment No. 1 to the outside counsel agreement with Colantuono, Highsmith & Whatley, P.C. adding \$120,000 to the current not-to-exceed amount of \$175,000 for a new total of \$295,000.

### **FISCAL IMPACT:**

The proposed amendments authorize additional expenditure of funds not-to-exceed \$270,000. Funds for the amendments are available in the current FY 2020 budget for the Office of the General Counsel.

### **COMPASS STRATEGIC GOALS:**

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A thriving and modern maritime seaport.
- A vibrant waterfront destination where residents and visitors converge.
- A Port with a healthy and sustainable bay and its environment.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A Port that is a safe place to visit, work and play.
- A financially sustainable Port that drives job creation and regional economic vitality.

### **DISCUSSION:**

The Office of the General Counsel is responsible for providing legal advice and representation to the Board of Port Commissioners, the CEO and executive team, as well as all departments of the District. This includes defending the District in litigation and administrative procedures, as well as advising the District on transactions, policies and other matters. In order to best advise and defend the District, in addition to the in-house attorneys, the Office of the General Counsel sometimes utilizes the services of outside law firms and experts to provide legal and consultant services in specific areas of law and to supplement the services of the in-house resources.

This agenda seeks Board approval of authorization for the General Counsel to execute an amendment to the expert legal services agreement with Kleinfelder, Inc. adding \$90,000 to the current not-to-exceed amount of \$275,000 for a new total of \$365,000, an amendment to the expert

legal services agreement with Windward Environmental, LLC, increasing the maximum amount by \$60,000 from \$330,000 to \$390,000, and an amendment to the outside counsel agreement with Colantuono, Highsmith & Whatley, P.C. adding \$120,000 to the current not-to-exceed amount of \$175,000 for a new total of \$295,000.

### **General Counsel's Comments:**

The Office of the General Counsel has drafted, reviewed and approved this agenda and the proposed amendments as to form and legality.

### **Environmental Review:**

The proposed Board action, including without limitation, a resolution authorizing amendments to agreements for legal services, does not constitute an "approval" or a "project" under the definitions set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur. CEQA requires that the District adequately assess the environmental impacts of projects and reasonably foreseeable activities that may result from projects prior to the approval of the same. Any project developed as a result of Board's action that requires the District or the Board's approval, including without limitation District proposed legislation or a request for funding will be analyzed in accordance with CEQA prior to such approval. CEQA review may result in the District, in its sole and absolute discretion, requiring implementation of mitigation measures, adopting an alternative, including without limitation, a "no project alternative" or adopting a Statement of Overriding Consideration, if required. The current Board action in no way limits the exercise of this discretion. Therefore, no further CEQA review is required.

The proposed Board action complies with Sections 20, 30, 71.5, 81 of the Port Act, which allow for the Board to pass resolutions, to manage the business of the District, for independent contractors to provide services of a professional, scientific or technical nature, and for the use of funds for expenses of conducting the District. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action does not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal Development Permit (CDP) Regulations because it will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a Coastal Development Permit or exclusion is not required. However, the District's projects require processing under the District's CDP Regulations. If a project is formulated as a result of Board's action, the Board will consider approval of the project and any improvements associated after the appropriate documentation under District's CDP Regulations has been completed and authorized by the Board, if necessary. The Board's action in no way limits the exercise of the District's discretion under the District's CDP Regulations.

### **Equal Opportunity Program:**

Not applicable.

### **PREPARED BY:**

Simon M. Kann  
Deputy General Counsel