



Legislation Text

File #: 2017-0230, **Version:** 1

DATE: June 20, 2017

SUBJECT:

RESOLUTION AUTHORIZING FOURTH AMENDMENT TO TETRA TECH, INC. LITIGATION ENVIRONMENTAL SUPPORT AGREEMENT INCREASING THE MAXIMUM AMOUNT PAYABLE UNDER THE AGREEMENT BY \$400,000 FOR A NEW MAXIMUM AMOUNT PAYABLE UNDER THE AGREEMENT OF \$1,766,000, AND EXTENDING THE TERMINATION DATE TO JUNE 30, 2018; AND WAIVING BPC POLICY NO. 110(B) AUTHORIZING A NEW AGREEMENT WITH TETRA TECH, INC. FOR SOUTH CAMPUS LITIGATION ENVIRONMENTAL SUPPORT IN AN AMOUNT NOT TO EXCEED \$390,000 THROUGH JUNE 30, 2018

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 expert witnesses and consultants to assist the District in legal matters. This agenda seeks Board approval and authorization for the General Counsel to execute one expert agreement and one amendment to an existing expert agreement. Details regarding the specific matters for which this agreement and amendment are proposed are protected by the attorney/client and work product privileges and are discussed in a separate confidential attorney-client privileged memoranda to the Board.

RECOMMENDATION:

Adopt a Resolution authorizing a Fourth Amendment to Tetra Tech, Inc. litigation environmental support agreement increasing the maximum amount payable under the agreement by \$400,000 for a new maximum amount payable under the agreement of \$1,766,000, and extending the termination date to June 30, 2018; and new agreement with Tetra Tech, Inc. for South Campus litigation environmental support in an amount not to exceed \$390,000 through June 30, 2018.

FISCAL IMPACT:

This amendment authorizes expenditure of additional funds not-to-exceed \$400,000. Funds for the Fourth Amendment are available in the proposed FY 2017-18 budget for the Office of the General Counsel. The Agreement authorizes expenditure of funds not-to-exceed \$390,000. Funds for the Agreement are available in the proposed FY2017-18 CIP budget for the Chula Vista South Campus Demolition Program No. PO 040.

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 Port with an innovative and motivated workforce.
- 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 expert witnesses and consultants to assist the District in legal matters. This agenda seeks Board approval for the General Counsel to execute Amendment No. 4 to the Agreement with Tetra Tech, Inc., increasing the maximum amount payable under the agreement by \$400,000 for a new maximum amount payable under the agreement of \$1,766,000, and extending the term through June 30, 2018. In addition, this agenda seeks the Board's waiver of the bidding requirements under BPC Policy No. 110(b), and Board approval for the General Counsel to execute an agreement with Tetra Tech Inc. for a maximum amount payable under the agreement of \$390,000 through June 30, 2018.

Details regarding the specific matters for which this amendment is proposed are protected by the attorney/client and work product privileges and are discussed in a separate confidential attorney-client privileged memoranda to the Board.

General Counsel's Comments:

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

Environmental Review:

The proposed Board action to authorize an agreement amendment for environmental litigation support services is Categorically Exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15306 (Class 6 - Information Collection) and Section 3.f of the District's Guidelines for Compliance with CEQA because the activities associated with the agreement in question will include basic data collection, research, experimental management, and resource evaluation activities that will not result in a serious or major disturbance to an environmental

resource. A CEQA Exemption was previously issued for this project on June 10, 2014. Pursuant to Section 15378(c) of the State CEQA Guidelines, the term “project” refers to the activity being approved, which may be subject to several discretionary approvals by governmental agencies, and does not mean each separate governmental approval. Accordingly, the requested Board action is a subsequent discretionary approval of a previously approved project. No further action under CEQA is required.

In addition, this component of the proposed Board action allows for the District to administrate its obligations under the Port Act and/or other laws. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, this component of the proposed Board action is consistent with the Public Trust Doctrine.

In addition, the proposed Board action is considered an “excluded development” pursuant to Section 8.e (Information Collection) of the District’s Coastal Development Permit Regulations. A “Coastal Act Categorical Determination of Exclusion” was previously issued for this project on June 10, 2014; therefore, issuance of a Coastal Development Permit is not required for the proposed Board action.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

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