



Legislation Text

File #: 2017-0377, **Version:** 1

DATE: August 8, 2017

SUBJECT:

RESOLUTION AUTHORIZING GENERAL COUNSEL TO EXECUTE AMENDMENT AND ASSIGNMENT OF CONTINGENT LEGAL SERVICES AGREEMENT RELATED TO MONSANTO LITIGATION WITH JACKSON GILMOUR & DOBBS AND KELLEY DRYE & WARREN, AND AUTHORIZING GENERAL COUNSEL TO ENTER INTO A LEGAL SERVICES AGREEMENT WITH KELLEY DRYE & WARREN IN THE AMOUNT OF \$250,000

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 proceedings, as well as advising the District on transactions, policies and other matters. In order to best represent the District, in addition to the in-house attorneys, the Office of the General Counsel sometimes utilizes the services of outside law firms to provide legal services in specific areas of law and to supplement the services of the in-house resources.

At the March 2015 Board of Port Commissioners (Board) meeting, the Board authorized the filing of a lawsuit against Monsanto Company, Solutia Inc., and Pharmacia Company (collectively, Monsanto) related to polychlorinated biphenyls (PCBs) in San Diego Bay. Subsequently, pursuant to Board authorization, the General Counsel's Office entered into Legal Services Agreement No. GC-15/16-4 (Agreement) with Jackson Gilmour & Dobbs, PC, (JGD) for legal services related to the District's lawsuit against Monsanto. Effective November 1, 2016, JGD combined its business with the law firm of Kelly Drye & Warren LLP (KDW). This agenda seeks Board authorization for the General Counsel to execute an assignment and amendment of the Agreement pursuant to which KDW will replace JGD under the Agreement for all purposes.

In addition, this agenda seeks Board authorization for the General Counsel to enter into a legal services agreement with KDW in the amount of \$250,000. Details regarding the scope this agreement 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 the General Counsel to execute amendment and assignment of contingent legal services agreement related to the Monsanto litigation with Jackson Gilmour & Dobbs and Kelley Drye & Warren, and authorizing the General Counsel to enter into a legal services agreement with Kelley Drye & Warren in the amount of \$250,000.

FISCAL IMPACT:

Pursuant to Legal Services Agreement No. GC-15/16-4, the District does not pay outside counsel in the Monsanto matter unless it is successful in the lawsuit. Any fiscal impact of this Agreement cannot be determined at this time.

The proposed legal services agreement with KDW would authorize expenditure of \$250,000. Funds for this agreement are available in the current FY2017-18 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 proceedings, as well as advising the District on transactions, policies and other matters. In order to best represent the District, in addition to the in-house attorneys, the Office of the General Counsel sometimes utilizes the services of outside law firms to provide legal services in specific areas of law and to supplement the services of the in-house resources.

In March 2015, the Board authorized the filing of a lawsuit against Monsanto related to polychlorinated biphenyls (PCBs) in San Diego Bay. Subsequently, pursuant to Board authorization, the General Counsel's Office entered into Legal Services Agreement No. GC-15/16-4 (Agreement) with JGD for legal services related to the District's lawsuit against Monsanto. Effective November 1, 2016, JGD combined its business with the law firm of KDW. The proposed assignment and amendment would replace JGD with KDW under the Agreement for all purposes. The Office of General Counsel shall retain complete control over the course and conduct of the lawsuit.

In addition, this agenda seeks Board authorization for the General Counsel to enter into a legal services agreement with KDW in the amount of \$250,000. Details regarding the scope this agreement 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 amendments as to form and legality.

Environmental Review:

The proposed Board action does not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because it will not have a potential to result in a direct or indirect physical change in the environment and is, therefore, not subject to CEQA. No further action under CEQA is required.

In addition, the proposed Board action allows for the District to implement 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, the proposed Board action is consistent with the Public Trust Doctrine.

Finally, 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 Regulations. Therefore, issuance of a Coastal Development Permit or exclusion is not required.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

John Carter
Deputy General Counsel