



## Legislation Text

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**File #:** 2018-0292, **Version:** 1

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**DATE:** July 17, 2018

**SUBJECT:**

**RESOLUTION AUTHORIZING THE GENERAL COUNSEL TO EXECUTE AN AGREEMENT FOR EXPERT CONSULTANT SERVICES WITH KLEINFELDER, INC. FOR A MAXIMUM AMOUNT PAYABLE OF \$290,000; AN AGREEMENT FOR EXPERT CONSULTANT SERVICES WITH WINDWARD ENVIRONMENTAL, LLC FOR A MAXIMUM AMOUNT PAYABLE OF \$250,000; AND AN AGREEMENT FOR EXPERT CONSULTANT SERVICES WITH NEWFIELDS COMPANIES, LLC FOR A MAXIMUM AMOUNT PAYABLE OF \$218,000; FY 2019 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 proceedings, as well as advising the District on transactions, policies and other matters. In order to best represent the District, in addition to the utilization of in-house attorneys and experts, the Office of the General Counsel sometimes utilizes the services of outside expert consultants to assist in its representation of the District in legal matters. This agenda seeks Board authorization for the General Counsel to execute three expert consultant agreements. Details regarding the specific matters for which these agreements are proposed are protected by the attorney/client and work product privileges and are discussed in a separate confidential attorney-client privileged memorandum to the Board.

### **RECOMMENDATION:**

Adopt a resolution authorizing the General Counsel to execute an Agreement for Expert Consultant Services with Kleinfelder, Inc. for a maximum amount payable of \$290,000; an Agreement for Expert Consultant Services with Windward Environmental, LLC for a maximum amount payable of \$250,000; and an Agreement for Expert Consultant Services with NewFields Companies, LLC for a maximum amount payable of \$218,000.

### **FISCAL IMPACT:**

In total the agreements authorize expenditure of funds not-to-exceed \$758,000. Funds for these agreements are available in the current FY 2018-2019 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:**

This agenda seeks Board authorization for the General Counsel to execute three expert consultant agreements:

- Agreement for Expert Consultant Services with Kleinfelder, Inc. for a maximum amount payable of \$290,000;
- Agreement for Expert Consultant Services with Windward Environmental, LLC for a maximum amount payable of \$250,000; and
- Agreement for Expert Consultant Services with NewFields Companies, LLC for a maximum amount payable of \$218,000.

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

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

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

## **Environmental Review:**

The proposed Board action, including without limitation, a resolution authorizing three agreements for expert consultant services for the continued operation of an existing commercial facility, 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 discretionary approval resulting in a physical change to the environment 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 direction in no way limits the exercise of this discretion. Therefore, no further CEQA review is required.

In addition, the proposed Board action complies with Sections 21 and 81 of the Port Act, which allow for the Board to pass ordinances and resolutions, and use District 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 they 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, development within the District requires processing under the District’s CDP Regulations. Future development, as defined in Section 30106 of the Coastal Act, will remain subject to its own independent review pursuant to the District’s certified CDP Regulations, PMP, and Chapters 3 and 8 of the Coastal Act. The Board’s direction or action in no way limits the exercise of the District’s discretion under the District’s CDP Regulations. Therefore, issuance of a CDP or exclusion is not required at this time.

**Equal Opportunity Program:**

Not applicable.

**PREPARED BY:**

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Deputy General Counsel