



Legislation Text

File #: 2021-0297, **Version:** 1

DATE: August 10, 2021

SUBJECT:

RESOLUTION AUTHORIZING THE GENERAL COUNSEL TO EXECUTE AMENDMENT NO. 1 TO AGREEMENT FOR LEGAL SERVICES WITH ALLEN, MATKINS, LECK, GAMBLE, MALLORY & NATSIS LLP INCREASING THE NOT-TO-EXCEED AMOUNT BY \$860,000 FROM \$175,000 TO \$1,035,000; FY 2022 EXPENDITURES ARE BUDGETED, ALL FUNDS FOR FUTURE FISCAL YEARS WILL BE BUDGETED IN THE APPROPRIATE FISCAL YEAR, SUBJECT TO BOARD APPROVAL UPON ADOPTION OF EACH FISCAL YEAR'S BUDGET.

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, including 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 authorization for the General Counsel to execute an amendment to agreement for legal services. Details regarding the specific matter for which this agreement is 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 Amendment No. 1 to Agreement for Legal Services with Allen, Matkins, Leck, Gamble, Mallory & Natsis LLP, increasing the not-to-exceed amount by \$860,000 from \$175,000 to \$1,035,000.

FISCAL IMPACT:

This agreement authorizes expenditure of additional funds not-to-exceed \$860,000. Funds for this agreement are available in the current FY 2021-2022 Budget for the Office of the General Counsel, all funds for future fiscal years will be budgeted in the appropriate fiscal year, subject to Board approval upon adoption of each fiscal year's budget.

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 an amendment to Agreement for Legal Services with Allen, Matkins, Leck, Gamble, Mallory & Natsis LLP increasing the not-to-exceed amount by \$860,000 from \$175,000 to \$1,035,000.

Details regarding the specific matter for which this agreement is 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 agreement as to form and legality.

Environmental Review:

The proposed Board action, including without limitation, a resolution authorizing an amendment to agreement to provide legal services, does not constitute a “project” under the definition 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 the proposed Board 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 proposed Board action in no way limits the exercise of this discretion. Therefore, no further CEQA review is required.

The proposed Board action allows for the District to implement its obligations under Sections 35 and 81 of the Port Act, which authorize the Board to do acts necessary and convenient for the exercise of its power; and the use funds for necessary 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, 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 proposed Board 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.

Diversity, Equity, and Inclusion Program:

Not applicable.

PREPARED BY:

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