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Title: CONSIDER AMENDMENT NUMBER 8 TO A SPECIAL COUNSEL ENGAGEMENT AGREEMENT WITH GREENBERG TRAURIG, LLP FOR LEGAL SERVICES RELATED TO RISK MANAGEMENT AND REGULATORY ISSUES THROUGH DECEMBER 31, 2018, IN A NOT-TO-EXCEED AMOUNT OF UP TO \$312,950

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Attachments: 1. 2018-752_Exhibit 1_Special Counsel engagement; Amendment No. 8

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Report to Carson Reclamation Authority

Wednesday, November 07, 2018

Consent

SUBJECT:

CONSIDER AMENDMENT NUMBER 8 TO A SPECIAL COUNSEL ENGAGEMENT AGREEMENT WITH GREENBERG TRAURIG, LLP FOR LEGAL SERVICES RELATED TO RISK MANAGEMENT AND REGULATORY ISSUES THROUGH DECEMBER 31, 2018, IN A NOT-TO-EXCEED AMOUNT OF UP TO \$312,950

I. SUMMARY

The Authority originally contracted in May, 2016 with Greenberg Traurig, LLP (GT) to provide it and the Authority’s legal counsel specific legal assistance in the procurement of a new Pollution and Remediation Legal Liability Policy and associated negotiations on the Environmental Protection Program Policy and with Tetra Tech, the environmental contractor. The firm continues to provide technical legal work to the CRA in a number of environmental areas.

The Second Amendment took the contract to May 31, 2017 and included follow-on work on the financial assurance, negotiating the Master Horizontal Developer contract, structuring the insurance programs in cooperation with Macerich (OPPI wrap program), as part of the Macerich MOU, prevailing wage issues in the O&M contract, and other technical regulatory issues with DTSC.

The Third Amendment was to approve a Legal Project Management system to create the unified document portal for all of the developers and contractors containing regulatory documents, contracts, plans, designs, budgets, etc.

The 4th amendment was largely focused on the placement of the Development PLL in a facultative reinsurance product, as well as providing legal support to the CRA on insurance, indemnity and surety issues related to a number of new contractors being added to the project through the RES Environmental Risk Manager contract. Also included was the development of a number of new regulatory documents, including the “Roadmap to Occupancy” (being developed by RES), resolution of the “site soils” issue, the Environmental Covenant, Institutional Control Plan and Environmental CCRs.

The 5th Amendment extended the work through April 30, 2018. The 6th Amendment extended the period through April 30, 2019 (if necessary), and focused on the development of several key development insurance programs, such as the Owner Control Insurance Program (OCIP), the Owner Protective Professional Insurance policy (OPPI) and contractor bonding and/or subcontractor default insurance (SDI). Additional work was to negotiate with DTSC on the “rebalancing” of the Enterprise Fund to make more funds available for site work, and the development with RES, the Horizontal Master Developer, of the Environmental Covenant and other regulatory agreements.

Amendment No. 6 covered: the negotiation of terms and underwriting of OCIP, OPPI, Development PLL, master builder’s risk program for environmental work and allocation of costs for various master developer program; underwriting and manuscripting of coverage to support wrap program terms for GL and builder’s risk programs with Macerich; negotiation and manuscripting of primary pollution programs for transition to Development Period, with particular emphasis on OPPI coverage and risk mitigation strategies for pile design and foundation systems; negotiation and structuring of CRA surety program (sequential bonding, SDI) for contract implementation during development period and integration with pollution and wrap insurance programs; and support for contracting with RES vendors regarding insurance, risk mitigation, surety programs and contract administration.

Amendment No. 7 was related to the Legal Project Management program.

A major portion of the work performed under Amendment No. 6 was reimbursed to the CRA by CAM-Carson, LLC as part of the Agreement to Undertake Validation Action and Reimbursement Agreement II (“Validation and Reimbursement Agreement”), in the amount of \$288,071.50.

II. RECOMMENDATION

1. APPROVE Amendment No. 8 to a Special Counsel Engagement Agreement (“Amendment”) with Greenberg Traurig, LLP for legal services related to placement of insurance, development of regulatory agreements, and other related matters in the amount of \$312,950.
2. AUTHORIZE the Chairman to execute the Amendment following approval as to form by

the Authority Counsel.

III. ALTERNATIVES

Take another action the Board deems appropriate.

IV. BACKGROUND

This Amendment No. 8 is focused on transitioning to the Development Period, now that the CAM-Carson, LLP project is moving forward including support for contracting with RES vendors, other developers and site contractors regarding insurance, risk mitigation, surety programs and contract administration. This includes engagement with the brokers and developers and insurance, reinsurance and excess markets for administration of new insurance programs and any claims thereunder. It includes engaging with one or more new master developers on the overall risk management program and their expected participation in it.

Continue drafting and negotiation of new regulatory documents with DTSC for Phased Development Plan implementation, as needed, to correct deficiencies in the current regulatory documents, including the Environmental Covenant, Institutional Control Plan and Environmental CCRs.

The Terms of the Engagement Letter remain the same.

V. FISCAL IMPACT

This \$312,950 will come from the CRA Legal Services line item.

VI. EXHIBITS

1. Special Counsel Engagement; Amendment No. 8 (pgs. 4-14)

Prepared by: John S. Raymond, Executive Director