



Legislation Text

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Report to Carson Reclamation Authority

Tuesday, January 03, 2023

Consent

SUBJECT:

CONSIDER ON-CALL SPECIAL COUNSEL ENGAGEMENT AGREEMENT WITH GREENBERG TRAURIG, LLP FOR LEGAL SERVICES RELATED TO PLACEMENT, REPLACEMENT AND RESTRUCTURING OF INSURANCE, DEVELOPMENT OF REGULATORY AGREEMENTS, TRANSACTION SUPPORT FOR ENVIRONMENTAL, RISK MANAGEMENT, AND OTHER RELATED MATTERS WITH RESPECT TO THE 157 ACRE SITE

I. SUMMARY

Over the past several years, staff has brought various amendments to (i) the Special Counsel engagement letter (Primary Contract) originally entered into in 2016 between the Carson Reclamation Authority (CRA) and Greenberg Traurig, LLP (GT) to extend their legal services until a date certain and at a not-to-exceed dollar amount, for a defined scope of work, and (ii) the engagement letter between the CRA and GT for GT's provision.

In October 2020 the Board approved a simpler On-Call Special Counsel Engagement Agreement that merely specifies the term of the contract, through December 31, 2022, and the billing rate for the Shareholder and Associate and other billing terms. The amount of the contract was dependent on the amount of work the CRA requests during the term of the contract.

Currently GT is still the lead on the processing of all insurance claims made by the CRA, the recent renewal of the Public Officials Liability policy, the recent renewal of the Contractor Pollution Liability policy, the replacement of the previous Builder's Risk policy with Property Insurance (and renewal this year) and the negotiation of the environmental, risk management and insurance administration terms of the Agreements negotiated between the CRA and Carson Goose Owner, LLC (CGO) and the renegotiation of the same with CAM-Carson, LLC on Cell 2. There will be additional future work related to the amendments of the Enterprise Fund Agreement, the negotiation with developers on Cell 1 on the same environmental and risk management issues and the drafting of future regulatory agreements. In addition, GT took the lead on drafting the environmental Land Use Covenant, negotiating the provisions with the developers (the affected parties) and seeking DTSC's approval. The Covenant is almost ready for recordation.

The term of this engagement would be for two years, until December 31, 2024. GT has also requested an increase in their billing rate, which they have not had since the early years of their agreement in 2016.

II. RECOMMENDATION

1. APPROVE ON-CALL SPECIAL COUNSEL ENGAGEMENT AGREEMENT WITH GREENBERG TRAURIG, LLP FOR LEGAL SERVICES RELATED TO PLACEMENT, REPLACEMENT AND RESTRUCTURING OF INSURANCE, DEVELOPMENT OF REGULATORY AGREEMENTS, TRANSACTION SUPPORT FOR ENVIRONMENTAL, RISK MANAGEMENT AND OTHER RELATED MATTERS WITH RESPECT TO THE 157 ACRE SITE

III. ALTERNATIVES

TAKE another action the Board deems appropriate.

IV. BACKGROUND

The CRA contracted in May, 2016 with Greenberg Traurig, LLP to provide it and the CRA's legal counsel specific legal assistance in the procurement of a new Pollution Legal Liability Policy, and associated negotiations on the Environmental Protection Program Policy (the "EPP Policy") that Carson Marketplace had purchased from American International Special Lines Insurance Company ("Insurer" or "AIG"), and with Tetra Tech, the then environmental contractor. The Primary Contract was amended on October 4, 2016 to take the work up through the end of December, 2016, to complete the work on the AIG EPP, the DTSC Financial Assurance, and the work transitioning the CRA from the Tetra Tech contract into a new time and materials based contract with another vendor for the installation of the remedial systems under the RAP as well as the future OM&M of those systems.

There have been a number of amendments to the GT Contract over the past six years. Prior to the current agreement, which was approved in October 2020 when the Board approved a simpler On-Call Special Counsel Engagement Agreement that merely specifies the term of the contract, the most recent amendments, beginning with 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.

In most ways, the major environmental liability legal work on the 157 Acre Site is largely done. Currently GT is still the lead on the processing of all insurance claims made by the CRA, the recent renewal of the Public Officials Liability policy, the recent renewal of the Contractor Pollution Liability policy, the replacement of the previous Builder's Risk policy with Property Insurance (and renewal this year) and the negotiation of the environmental, risk management and insurance administration terms of the Agreements negotiated between the CRA and Carson Goose Owner, LLC (CGO) and the renegotiation of the same with CAM-Carson, LLC on Cell 2. There will be additional future work related to the amendments of the Enterprise Fund Agreement, the negotiation with developers on Cell 1 on the same environmental and risk management issues and the drafting of future regulatory agreements. While the environmental Land Use Covenant is almost ready for recordation, provisions of the 2006 Compliance Framework Agreement may have sections that need to survive and need to be revisited, and the Institutional Control Plan still needs to be developed.

This is still a significant amount of work, but less than the 2016 termination of the Tetra Tech contract and associated other agreements or the placement of the PLL, CPL/PLI, the OPPI, and the Builder's Risk/OCIP which also occurred in the 2016-2018 period.

V. FISCAL IMPACT

Greenberg Traurig, LLP contract expenditures are already included in the Carson Reclamation Authority budget.

The CRA had budgeted \$130,000 in this account for the current fiscal year, much of which is reimbursed from developer deposits. So far this year only approximately \$28,000 has been spent, so this change would not have any significant fiscal impact.

VI. EXHIBITS

1. ON-CALL SPECIAL COUNSEL ENGAGEMENT AGREEMENT WITH GREENBERG TRAUIG, LLP FOR LEGAL SERVICES RELATED TO PLACEMENT, REPLACEMENT AND RESTRUCTURING OF INSURANCE, DEVELOPMENT OF REGULATORY AGREEMENTS, TRANSACTION SUPPORT FOR ENVIRONMENTAL, RISK MANAGEMENT AND OTHER RELATED MATTERS WITH RESPECT TO THE 157 ACRE SITE (pgs. 4-13)

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