



Legislation Text

File #: 2018-295, Version: 1

Report to Carson Reclamation Authority

Tuesday, May 01, 2018

Consent

SUBJECT:

CONSIDER AMENDMENT NUMBER 6 TO A SPECIAL COUNSEL ENGAGEMENT AGREEMENT WITH GREENBERG TRAURIG, LLP FOR LEGAL SERVICES RELATED TO PLACEMENT OF INSURANCE, DEVELOPMENT OF REGULATORY AGREEMENTS, AND OTHER RELATED MATTERS IN THE AMOUNT OF \$392,290

I. SUMMARY

The Authority contracted in May, 2016 with Greenberg Traurig, LLP to provide it and the Authority'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 has purchased from American International Special Lines Insurance Company ("Insurer" or "AIG"), and with Tetra Tech, the environmental contractor. The 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 Authority 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. The First Amendment also finalized work on the Bridge PLL, helped secure the CPL replacement and began the larger Development PLL program, including working with Macerich and a prospective "Master Developer" on the balance of the site.

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 was 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. This 6th Amendment extends the period through April 30, 2019 (if necessary), and focuses 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 is 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.

II. RECOMMENDATION

1. APPROVE Amendment No. 6 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 \$392,290.
2. AUTHORIZE the Chairman to execute the Amendment following approval as to form by the Authority Counsel.

III. ALTERNATIVES

TAKE another action the Authority deems necessary.

IV. BACKGROUND

The CRA 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 Legal Liability Policy, and associated negotiations on the Environmental Protection Program Policy (the “EPP Policy”) that Carson Marketplace has purchased from American International Special Lines Insurance Company (“Insurer” or “AIG”), and with Tetra Tech, the environmental contractor. In October, 2016 the contract was amended for several months 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. It also finalized work on the Bridge PLL, helped secure the CPL replacement and began the larger Development PLL program, including working with the Macerich. Since the original contract, the Engagement Letter has been amended a number of times based on what’s needed in the project.

The Scope of Work of Amendment No. 6 includes:

I. Financial Assurance Replacement/CFD Updates.

A. Scope of Work (30 hours):

1. Work with CRA staff, RES and SCS to revise Enterprise Fund Administration Agreement and new financial assurance mechanism to provide greater flexibility for use of remedial construction funds in "O&M Subaccount."
2. Work with prospective master developers to document flow of funds into CFD-1 and loan structure for repayment of CRA advances; documentation of CRA advances and loans.
3. Negotiate and document amendments to Enterprise Fund Administration Agreement with CRA representatives and DTSC.

B. Timing: 3-4 months.

C. 30 hours: \$18,450.

II. Placement of Key Development Insurance Programs.

A. Scope of Work:

1. Assist in negotiation, structuring and documenting insurance programs for transaction with Macerich, other selected developers regarding insurance provisions, allocation of environmental liabilities, Tetra Tech release, installation of remedial systems and allocation of costs for OCIP and Development PLL and related matters. (40 hours).
2. 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 (125 hours).
3. Support for contracting with RES vendors regarding insurance, risk mitigation, surety programs and contract administration (50 hours).
4. Engagement with JLT, Macerich, other selected developers and key insurance, reinsurance and excess markets for Development PLL,

Development CPL/PLI, OCIP and BR master programs and new OPPI program, and associated administration documents. Support drafting of development contracts with new selected master developers regarding risk management, surety and indemnification issues (200 hours).

B. Timing: 4 months.

C. 415 hours; 60% associate time anticipated. \$195,465.

III. Insurance and Risk Management Support for RES Contract for Horizontal Master Developer Role.

A. Together with the City Attorney, structure, negotiate and document appropriate agreements between RES and infrastructure general contractor, environmental contractor, O&M contractor. Manage risk management provisions and insurance aspects of various contracts and integration with the CRA's insurance program underwriting.

B. Support CRA/RES negotiations with other master developers with respect to risk management and indemnification attributes of the program, including surety elements of contracts and claims administration for wrap-up programs.

C. Timing: 3-4 months.

D. 225 hours (150 hours assumed for CBT; remainder as associate time); \$120,375.

IV. New Regulatory Agreements.

A. Select and negotiate new regulatory document structure for Phased Development Plan implementation, as needed to correct deficiencies in current regulatory documents, support new insurance programs and provide guidance to support site-wide remedial construction efforts.

B. Negotiate, draft and document new regulatory documents with DTSC and RES/CRA, including Environmental Covenant, Institutional Control Plan and Environmental CCRs. Coordinate with insurers for PLL and CPL/PLI and with vertical master developers.

C. Timing: 2 months.

D. 40 hours; \$21,000 at blended rate.

V. Excess April Time and Expenses on Insurance Program (PLL, CPL/PLI binders) and OPPI and TRC matters -- \$25,000.

- Travel Cost Estimate for travel to CA for DTSC meetings and related matters

(\$12,000). No travel time billed as per engagement letter; only out-of-pocket costs in accordance with terms of engagement letter.

- Curt Toll's hourly rate will increase to \$615 on January 1, 2018. Giuliano Apadula will bill at \$375 per hour. All other GT timekeepers, if any, will bill at a 10% discount from rack rates. Rates will remain constant through January 1, 2019.

TOTAL AUTHORIZATION: \$392,290.

V. FISCAL IMPACT

The Total Cost of the engagement would be \$392,290, payable by the CRA. Funds are available in the line item budgeted for Contractual Services in FY 2017-18. All of the other terms of Special Counsel Engagement Letter remain in effect.

VI. EXHIBITS

1. Amendment No. 6 to Engagement Letter (Pgs. 6-17)

Prepared by: John Raymond, Executive Director