



## Legislation Text

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**Report to Carson Reclamation Authority**

Tuesday, April 02, 2019

Consent

**SUBJECT:**

**CONSIDER AMENDMENT NO. 9 TO A SPECIAL COUNSEL ENGAGEMENT AGREEMENT WITH GREENBERG TRAURIG, LLP FOR LEGAL SERVICES RELATED TO PLACEMENT, REPLACEMENT AND RESTRUCTURING OF INSURANCE, DEVELOPMENT OF REGULATORY AGREEMENTS, AND OTHER RELATED MATTERS IN THE AMOUNT OF \$392,290; AND, CONSIDER AMENDMENT NO. 10 TO A SPECIAL COUNSEL ENGAGEMENT AGREEMENT WITH GREENBERG TRAURIG, LLP FOR LEGAL PROJECT MANAGEMENT SERVICES IN THE AMOUNT OF \$96,000**

**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. Recent work has 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 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.

Amendment No. 9 will deal with additional issues related to the Builders Risk and OCIP insurance programs and other insurance-related issues arising from the lot subdivision, land leases vs. fee simple conveyance, and the negotiation with new developers on Cells 1, 3, 4, and 5.

Attached also is Amendment No. 10 for the Data and Information Project Management task, for the interactive single-source web portal for the master developer diligence and project management efforts the CRA, its developers, contractors and insurers have used since 2017. GT’s Legal Project Management (LPM) Office developed this platform to conform the specifications to CRA’s immediate needs in the most cost-effective manner possible. This is a service GT provides to their clients at a rate less than commercial data management services.

## **II. RECOMMENDATION**

1. APPROVE AMENDMENT NUMBER 9 TO A SPECIAL COUNSEL ENGAGEMENT AGREEMENT WITH GREENBERG TRAURIG, LLP FOR LEGAL SERVICES RELATED TO PLACEMENT, REPLACEMENT AND RESTRUCTURING OF INSURANCE, DEVELOPMENT OF REGULATORY AGREEMENTS, AND OTHER RELATED MATTERS IN THE AMOUNT OF \$312,950
  
2. APPROVE AMENDMENT NUMBER 10 TO A SPECIAL COUNSEL ENGAGEMENT AGREEMENT WITH GREENBERG TRAURIG, LLP FOR LEGAL PROJECT MANAGEMENT SERVICES IN THE AMOUNT OF \$96,000
  
3. AUTHORIZE THE CHAIRMAN TO EXECUTE ALL AGREEMENTS IN A FORM

## ACCEPTABLE TO AGENCY COUNSEL

### III. ALTERNATIVES

TAKE another action the Board deems appropriate.

### IV. BACKGROUND

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.

There have been a number of amendments to the agreement over the past three years. 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.

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.

Amendment No. 8 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.

Amendment No. 9 would continue 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.

Amendment No. 9 will also deal with additional issues related to the Builders Risk and OCIP insurance programs and other insurance-related issues arising from the lot subdivision, land leases vs. fee simple conveyance, and the negotiation with new developers on Cells 1, 3, 4, and 5.

The Terms of the Engagement Letter remain the same.

#### Legal Project Management Data Services

One thing understood by large developers working on major construction projects is that there is a very high correlation between each dollar of estimated project cost and the number of pages of documents to manage: plans, specs, contracts, reports, studies, spreadsheets, invoices, backup, etc. The Carson Reclamation Authority is now the Master Developer of a project that could easily surpass \$750 million when all of the phases are combined. Even the CRA's direct part of the project - the installation of the remedial systems, subsurface structures, and pile systems -- could be over \$100 million. That translates to millions of pages of documents.

During the process of negotiating with Macerich and other developers it has become clear that the CRA needs three things:

1. A single repository of all material environmental, regulatory, and planning and development documents related to the project, which can be conformed to specific end-user access privileges and address the management of privileged or otherwise confidential materials;
2. A way to manage that amount of data and number of documents in a coherent and intuitive system; and
3. The ability to share those documents in a manner that provides access to the user as well as privacy and security.

#### CRA Documents

While, over the past 18 months, the CRA and its contractors and consultants have produced thousands of pages of new documents and the CRA also has possession of the documents related to the acquisition of the parcel from Starwood, there are still millions of pages of documents related to the project that now belong to the CRA but are not yet in its possession. Staff has transferred some of those documents from the Starwood server using the City's FTP site but that process itself is slow and cumbersome, and then the documents need to be organized in our own system, and therefore we have not used or sent any documents from that cache.

The CRA also now has three 1-terabyte hard drives delivered from Tetra Tech as part of the

Termination Agreement as part of the intellectual property transfer. Since data storage on the portal is not free, a lot of this data will remain stored on the drives and not be loaded into the portal (data like the daily air monitoring data for the past nine years). However, some of these documents will be extraordinarily valuable going forward, including the designs of the remedial systems and the “as-builts” of the installed liner and LFG wells and are well suited for inclusion on the portal.

Most of the documents related to the development will be related solely to the vertical development and be produced and shared between the vertical developers, their contractors, and their tenants. However, since the environmental work is required on all five cells and will largely be undertaken by the CRA, there is a significant amount of data that will go back and forth between the CRA and the individual developers, all of the contractors, consultants, and regulatory agencies. Neither the CRA nor even the City of Carson has the capability to manage such a task at this scale.

Attached is a Data and Information Project Management Proposal from Greenberg Traurig (GT), the CRA’s environmental Special Counsel, for an interactive single-source web portal for the master developer diligence and project management efforts. GT’s Legal Project Management (LPM) Office developed this platform to conform the specifications to CRA’s immediate needs in the most cost-effective manner possible. This is a service GT provides to their clients at a rate less than third party commercial data management services. Staff is attempting to fulfill developer due diligence requests, so the project would be up and running in a very short time period.

GT has provided a fixed price for the initial work effort to build and customize the portal, and a monthly fee for several months to provide training, end user support and document migration, including a GT “Data Steward” at a fixed monthly price who will handle the initial effort for CRA and the rest of the project team. We will collectively re-evaluate the need for the Data Steward after 6 months in the hope that CRA will no longer require that level of support. Part of the initial work is scoping the data management project: for example, at this time, we do not foresee the need to have CRA store and pay for the inclusion of most of the three 1-terabyte hard drives received from Tetra Tech as part of the information transfer resulting from the Termination Agreement on this portal. Instead, we should anticipate that those materials will be searched and managed separately by the Data Steward, or in this case, SCS has provided a first cut review of the documents and the “cleanup” and renaming of files will be done by RE|Solutions at an even lower cost.

Going forward, the CRA will end up producing new documents like infrastructure plans, the embankment landscaping plan, the revised subdivision map, all of the environmental/regulatory documents, and designs of the liner and remedial systems that will need to be shared with multiple developers and their consultants and key representatives, including future lenders and equity investors. These materials could need to be available to many, if not dozens, of vendors and others.

Additionally, as the CRA tries to limit the number of engineers and contractors on the site (something both DTSC and insurers have asked us to do because of the complexity of the landfill), there will still be dozens of developer staff, attorneys, consultants, contractors, regulators, and others that need to navigate the portal to either deposit or retrieve

information. The portal will be easily navigable. (Screen shots of the portal are attached.)

This system is being designed to work with the SharePoint project management system employed by RES. (The portal's Table of Contents, attached, ties to RES' SharePoint system and the Project Schedule developed by RES.) Finally, and perhaps most importantly, the system does not rely on unsecure cloud-based data sharing sites like Dropbox or Box, which are discouraged by the City's and everybody else's IT departments as being a security risk.

Data Storage Fees - \$12 per GB per Month

Each SharePoint site includes 10GB of storage at no charge.

For each GB over 10 GB, a monthly storage fee of \$12/GB will be charged. The following examples are for reference and estimating purpose only - 1GB of data is approximately equal to:

1. Example 1 - 3,500 .doc files or 60,000 pages
2. Example 2 - 2,500 .xls files or 150,000 pages
3. Example 3 - 1,800 .pdf files, or 20,000 pages
4. Example 4 - 4,800 .msg files, or 100,000 pages

## **V. FISCAL IMPACT**

Amendment No. 9 is for \$312,950 but is for an extended term, until 2020. Amendment No. 10 is for \$96,000.

## **VI. EXHIBITS**

1. APPROVE AMENDMENT NO. 9 TO A SPECIAL COUNSEL ENGAGEMENT AGREEMENT WITH GREENBERG TRAURIG, LLP FOR LEGAL SERVICES RELATED TO PLACEMENT, REPLACEMENT AND RESTRUCTURING OF INSURANCE, DEVELOPMENT OF REGULATORY AGREEMENTS, AND OTHER RELATED MATTERS IN THE AMOUNT OF \$312,950
2. APPROVE AMENDMENT NO. 10 TO A SPECIAL COUNSEL ENGAGEMENT AGREEMENT WITH GREENBERG TRAURIG, LLP FOR LEGAL PROJECT MANAGEMENT SERVICES IN THE AMOUNT OF \$96,000
3. AUTHORIZE THE CHAIRMENT TO EXECUTE THE AMENDMENTS IN A FORM ACCEPTABLE TO AGENCY COUNSEL

Prepared by: John S. Raymond, Executive Director