



Legislation Text

File #: 2020-619, Version: 1

Report to Carson Reclamation Authority

Tuesday, October 06, 2020

Consent

SUBJECT:

CONSIDER 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

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 of a datasite for document storage and systematic document retrieval (primarily for official and significant CRA documents, namely insurance policies, regulatory documents, and certain plan sets to make them available to insurance underwriters and other parties).

On the latter contract, staff is recommending allowing it to expire and to move the documents in-house or to use the CRA's Counsel's data storage and document retrieval system. On the Primary Contract, staff is recommending a simpler On-Call Special Counsel Engagement Agreement that merely specifies the term of the contract, proposed to be through December 31, 2022, and the billing rate for the Shareholder and Associate and other billing terms. The amount of the contract is dependent on the amount of work the CRA requests during the term of the contract.

Currently GT is the lead on the processing of all insurance claims made by the CRA, the recent renewal of the Public Officials Liability policy, the current renewal of the Builder's Risk policy, and the negotiation of the environmental, risk management and insurance administration terms of the Option Agreement being negotiated between the CRA and FBD Carson, LLC (FBD). 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. GT will also support the CRA in connection with the extension, modification and renewal of the CPL/PLI program, the placement of new joint insurance programs with FBD (if applicable) (CGL, Builder's Risk, OPPI) and in the processing of endorsements to the existing pollution legal liability policy for the FBD project and potentially, the Cell 1 project.

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 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.

In some ways, the major environmental liability legal work on the 157 Acre Site is largely done. Currently GT is the lead on all insurance claims made by the CRA, the recent renewal of the Public Officials Liability policy, the current renewal of the Builder's Risk policy, and the negotiation of the environmental risk management and insurance administration terms of the proposed Option Agreement with FBD. This is still a significant amount of work, but not like the termination of the Tetra Tech contract and associated other agreements, nor the placement of the PLL, CPL/PLI, the OPPI, and the Builder's Risk/OCIP which occurred in the 2016-2018 period. There will be additional future work related to the Enterprise Fund Agreement as well as the negotiation with developers on Cell 1 on the same environmental issues, as well as the drafting of future regulatory agreements and the renewal of the CPL/PLI in 2022.

V. FISCAL IMPACT

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

The amount of \$312,950 was carried over from the prior fiscal year and was not spent during the previous period of the GT contract, and some of those fees related to the negotiation of the FBD transaction are eligible to be reimbursed from developer deposits the CRA has received so far.

VI. EXHIBITS

- 1. 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 (pgs. 4-13)**

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