



PORT OF OAKLAND

6/23/2022

AGENDA REPORT

PROPOSED ACTION:

Resolution: Approval and Authorization for the Port Attorney to Enter into Fiscal Year 2023 Outside Counsel and Consultant Retention Agreements with Selected Law Firms and Consultants and Related Actions, in an initial total amount of **\$3,456,000**, subject to adjustments under the Port Attorney's contracting authority. (Port Attorney)

Submitted By: Mary Richardson, Port Attorney

Parties Involved: Various Law Firms and Consultants, (See Attachment A)

Amount: **\$3,456,000** (Fiscal Year 2023)

EXECUTIVE SUMMARY:

This action would authorize the Port Attorney to retain the outside counsel and consulting firms listed in Attachment A for Fiscal Year 2023 in an initial total amount of **\$3,456,000**, subject to adjustments under the Port Attorney's contracting authority.

BACKGROUND & ANALYSIS

Pursuant to the Board of Port Commissioners' ("Board") By-Laws and Administrative Rules, the Board has assigned to the Port Attorney the authority to retain special legal counsel, legal experts, and other consultants to provide legal services for the Port of Oakland ("Port").

Because the expenditure for specialized legal counsel and services and related consultant services is a function of the amount, nature, and intensity of legal claims, litigation, regulatory action, transaction, and other work impacting the Port during each fiscal year, the actual expenditure can vary widely from year to year and can be quite different from the budgeted amounts.

This Agenda Report seeks the Board's authorization to retain counsel; it does not seek approval of the Port Attorney's Office budget. The official Port Attorney's Office operating budget and other budgets managed by the Office are included with the overall Port-wide budget which the Finance Department is separately presenting to the Board for approval.

In 2019, the Port Attorney issued a Request for Qualifications ("RFQ") seeking qualifications from law firms who could provide legal services to the Port. In May 2022, the Port Attorney issued an additional RFQ seeking qualifications from law firms in specific areas that the Port Attorney determined were needed. The qualifications were reviewed and evaluated by the Port Attorney's Office. This resolution authorizes the Port Attorney to enter into professional services contracts with the law firms and consultants listed in **Attachment A** up to the maximum amount of **\$3,456,000** in amounts for each

matter up to the amount disclosed in attorney-client privileged communications from the Port Attorney to the Board. The Port Attorney chose the firms on **Attachment A** to perform the services listed based on a variety of factors including the Port's needs, expertise of the firms, rates, insurance carrier requirements, and other criteria.

During the fiscal year, events may occur that require additional legal service providers or the increase to the maximum contract amount estimated for each matter. In instances where additional legal service providers are required, the Port Attorney may enter into a legal services agreement with one of the firms listed on **Attachment A**, a firm that provided a Statement of Qualifications in response to the 2019 or 2022 RFQ, or a firm selected pursuant to an informal solicitation in compliance with Port Purchasing Ordinance, as long as the amount of the retention does not exceed the Port Attorney's contracting authority. Where a contract amount is proposed to be increased to an amount above the authorized amount, the Port Attorney will request additional Board authority if the increased amount is above the Port Attorney's contracting authority. For example, if the Port enters into a retention agreement with a law firm or consulting firm for a particular matter in the initial authorized amount of \$20,000, the Port Attorney could amend that contract during the fiscal year to increase the amount authorized to a total of \$150,000 without obtaining further Board approval. On the other hand, if the Port Attorney desires to increase the same contract amount to \$180,000 (\$30,000 above the Port Attorney's contracting authority), the Port Attorney would need to seek and obtain further Board approval to enter into an amendment.

OTHER FINDINGS AND PROVISIONS

ENVIRONMENTAL REVIEW

The proposed action was analyzed under the California Environmental Quality Act (CEQA) and was found to be:

- ☐ Categorically exempt under the following CEQA Guidelines Section:

Choose an item.

- ☒ Exempt from CEQA because it is not a "Project" under CEQA Guidelines Section 15061(b)(3).
- ☒ Other/Notes: Entering into agreements with the selected law firms and consultants to provide legal service will not have a significant effect on the environment and therefore is not a project under CEQA. No further environmental review is required.

BUDGET

- ☐ Administrative (No Impact to Operating, Non-Operating, or Capital Budgets); OR

☒ Operating

☒ Non-Operating

☐ Capital

Analysis: Expenditures for Outside Counsel and Consultant Retention Agreements in this Agenda Report are included in the proposed FY 2023 Legal Services and Legal Contingency Budgets. There is no budget or staffing impact.

STAFFING

- ☒ No Anticipated Staffing Impact.

- ☐ Anticipated Change to Budgeted Headcount.

Reason:

- ☐ Other Anticipated Staffing Impact (e.g., Temp Help).

Reason:

MARITIME AND AVIATION PROJECT LABOR AGREEMENT (MAPLA):

Applies? No (Not Aviation or Maritime CIP Project) – proposed action is not covered work on Port's Capital Improvement Program in Aviation or Maritime areas above the threshold cost.

- ☐ Additional Notes:

LIVING WAGE (City Charter § 728):

Applies?

No (Other) – see explanation below.

- ☒ Additional Notes: The proposed outside legal counsel and consulting firms are not involved in a Port Aviation or Port Maritime business.

SUSTAINABLE OPPORTUNITIES:

Applies? No.

GENERAL PLAN (City Charter § 727):

Conformity Determination:

<p><u>Reason:</u> There are no sustainability opportunities related to this proposed action because it does not involve a development project, purchasing of equipment, or operations that present sustainability opportunities.</p>	<p>No Project – conformity determination not required because proposed action does not change use of or make alterations to an existing facility, or create a new facility.</p>
<p><u>STRATEGIC PLAN.</u> The proposed action would help the Port achieve the following goal(s) and objective(s) in the Port’s Strategic Business Plan:</p> <div data-bbox="203 520 1360 726"> <div> <input checked="" type="checkbox"/> Grow Net Revenues <input checked="" type="checkbox"/> Modernize and Maintain Infrastructure </div> <div> <input type="checkbox"/> Improve Customer Service <input type="checkbox"/> Pursue Employee Excellence </div> <div> <input checked="" type="checkbox"/> Strengthen Safety and Security <input type="checkbox"/> Serve Our Community </div> <div> <input checked="" type="checkbox"/> Care for Our Environment </div> </div>	

ATTACHMENT A

**PORT ATTORNEY'S OFFICE
OUTSIDE COUNSEL/CONSULTING FIRMS
FY2022-23**

LAW FIRM/CONSULTING FIRM/COST ITEMS	MATTER NAMES
Anderson & Krieger LLP (Cambridge, MA)	
	Aviation Regulatory Matters/ Airport Projects
Andrada & Associates (Oakland)	
	General Claims and Litigation
	Francisco v. Port
Best Best & Krieger (Walnut Creek)	
	Airport Construction Advice
	Harbor Turning Basin Project
	Litigation
	Howard Terminal (Litigation)
	Utility Rates
Buchalter, a Professional Corporation (San Francisco)	
	Litigation (including bankruptcy)
Donahue Fitzgerald (Oakland)	
	Real Estate/Leasing Advice
Duncan Weinberg, Genzer, Pembroke, P.C. (Washington, DC)	
	Power Utility Advice
Environmental General Counsel (Berkeley)	
	Environmental Pollution Issues: Howard Terminal
Faegre Drinker Biddle & Reath LLP (Los Angeles)	

	Benefits
Farella Braun + Martel LLP (San Francisco)	
	General Risk Management and Cost Recovery Advice
	GASB 49 Cost Recovery Claims Against Insurance Carriers/Insurance Advice Related to Pollution Conditions
Goldfarb & Lipman LLP (Oakland)	
	Howard Terminal Real Estate Advice
Hanson Bridgett (San Francisco)	
	Employment Advice
	Employment Claims/Litigation
	Copyrights/Trademarks/Intellectual Property Advice
Hogan Lovells US LLP (Washington, DC)	
	Railroad/Surface Transportation Board Advice
Jenner & Block (Los Angeles)	
	Drinking Water
	Air Quality
	Howard Terminal (Litigation)
Laughlin Falbo Levy & Morell (Oakland)	
	Workers' Compensation
Law Office of Clare M. Gibson (Oakland)	
	Public Works Contracting Advice (General)
	Bid/Proposal Protests Advice
Mullen & Filippi (Oakland)	
	Workers' Compensation
Newmeyer & Dillion	
	General Claims and Litigation
O'Melveny & Myers LLP (Los Angeles)	

	Bond/Finance Matter
Orrick Herrington & Sutcliffe (San Francisco)	
	Bond/Tax/Finance Matters
Perkins Coie LLP (San Francisco)	
	Eagle Rock Aggregates
	Airport Projects
	Turning Basin
Ramsey Law Group (Lafayette)	
	General Commercial Collection and Litigation (Unlawful Detainers, etc.)
Richard Thorson Grave & Royer LLP (Oakland)	
	Workers' Compensation
Rudder Law Group (Alameda)	
	Aviation Regulations and Permitting
	EPA Administrative Order and Sanitary Sewer Issues
	Ethics/Governance/Municipal Affairs
	Port Codes, CEQA Guidelines, and Other Policy Assistance
	Howard Terminal Advice (includes Tidelands Trust & BCDC)
	Oak to Ninth (Real Estate Advice)
	Dredging and 50-foot Dredging Project closeout
	Regulatory Agency & Other Claims (BCDC, Corps, RWQCB, etc.)
	JLS Common Area Operator claims
	Port Ethics Training
Saul Ewing Arnstein & Lehr LLP (D.C.)	
	Shipping Act Advice; Terminal Leasing Efficiency Issues/Operations (Shipping Act/FMC Advice)

Sloan Sakai Yeung & Wong LLP (Berkeley)	
	Labor Negotiations/Labor Advice
	Litigation and Employment Claims
Sweet & Walker (San Francisco)	
	Collection Matters
Wendel Rosen LLP (Oakland)	
	Anticipated Litigation, Strategies & Appeals/Other Advice (including OAB)
	Clean Water/Environmental Regulatory Advice
	PRP Cost Recovery
	General Construction
	Construction Claims and Litigation
	Rolls Royce
	Trademark Advice
	PFAS (Fire-Fighting Foam)
White Brenner LLP (Sacramento)	
	Security Badge Appeal

Human Resources ("HR") related investigators retained by Port Attorney's Office but coded to HR's budget.
▶ Mary T. Roemer aka Terry Roemer, Esq. (Law Offices of Terry Roemer)
▶ Karen Kramer dba Kramer Workplace Investigations (Attorney)
▶ ARI Investigations, Inc. (Not Attorneys)
▶ Municipal Resource Group LLC (Attorneys)
▶ Prescott Law (Attorney)
▶ Meyers Nave (Attorney)
▶ Van Dermeyden Makus Law Corporation (Attorneys)