

## AGENDA REPORT

**Resolution:** Authorization to Establish Fiscal Year 2017-18\* Outside Counsel and Consultant Retention Agreements with Selected Law Firms and Consultants and Related Actions. **(Port Attorney)**

**MEETING DATE:** 6/22/2017

**AMOUNT:** \$4,825,000 (Fiscal Year 2017-18)\*

**PARTIES INVOLVED:** Various Law Firms and Consultants,  
(See Attachment A)

**SUBMITTED BY:** Danny Wan, Port Attorney

**APPROVED BY:** Danny Wan, Port Attorney

**ACTION TYPE:** Resolution

### **EXECUTIVE SUMMARY**

This action would authorize the Port Attorney to retain the outside counsel and consulting firms listed in Attachment A for Fiscal Year 2017-18\* in an initial total amount of \$4,825,000, subject to adjustments under the Port Attorney's contracting authority.

### **BACKGROUND**

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.

Over the years, the Port Attorney has retained special legal counsel and consultants under the Board-approved contracting authority of \$150,000 without Board review or approval. Where the proposed retention exceeded the Port Attorney's contracting authority, the Port Attorney sought and obtained approval from the Board to retain counsel and consultants.

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

\* One firm's proposed budget covers Fiscal Year 2017-18 and 2018-19

fiscal year, the actual expenditure can vary widely from year to year and can be quite different from the budgeted amounts.

The annual spending on outside legal services (and settlements) during the last 3 years has been lower than the historical average in the last ten years. During Fiscal Year 15-16, the Port spent a total of \$3,381,036 (including settlement payments). The Port spent the following amounts for outside legal services (including settlement payments) over the last 9 and three quarters fiscal years:

• Partial FY16-17 (7/16-3/17)	\$1,268,096
• FY15-16	\$3,381,036
• FY14-15	\$2,739,776
• FY13-14 (1 <sup>st</sup> full FY of Current Port Attorney's Tenure)	\$4,408,271
• FY12-13	\$7,670,566
• FY11-12	\$5,137,568
• FY10-11	\$7,400,587
• FY09-10	\$6,481,975
• FY08-09	\$8,834,231
• FY07-08	\$9,814,966

## **ANALYSIS**

In 2016, the Port Attorney issued a Request for Proposals ("RFP") seeking proposals from law firms who could provide legal services to the Port. The proposals 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 in amounts for each matter up to the amount disclosed in attorney-client privileged communications. 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 requirement, 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 the instances where a contract amount 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.

At the Board meeting on January 26, 2017, the Board approved the retention of Orrick, Herrington & Sutcliffe LLP (“Orrick”) as Bond Counsel in connection with the possible 2017 Bond Refunding Transaction in the not to exceed amount of \$220,000. Board authority is requested to increase the contracting amount by \$40,000 to \$260,000 to cover the increased scope of work based on the Port’s evaluation of possible multiple series of tax-exempt and taxable bonds. The total contracting amount of \$4,825,000 being requested includes this additional \$40,000.

While there is certainly the need to hire large law firms with national and international reputation and diverse resources, many smaller and local firms can perform much of the work just as well, if not better, at lower prices. Therefore, it is the Port Attorney’s goal to retain as many small and local firms as possible that have the capacity to do quality work, especially in the areas of municipal/government law, real estate, environment, contracting, and regulatory compliance. Based on the proposed firms and consultants in Attachment “A”, it is expected that approximately 27% of the contract (based on contract amounts) would be awarded to Oakland firms and businesses and 32% would be awarded to firms in the local impact area (Oakland, Alameda, Emeryville and San Leandro). The vast majority of firm and consultants are located in the San Francisco Bay Area.

## **BUDGET & STAFFING**

This expense was planned and is covered in the proposed FY17-18 Budget. There is no additional budget impact.

## **MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)**

The matters contained in this Agenda Report do not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply.

## **STRATEGIC PLAN**

The action described herein would help the Port achieve the following goals and objectives in the Port’s Strategic Plan

<http://www.portofoakland.com/pdf/about/strategicPlan2011-2015.pdf>

- Goal A: Create sustainable economic growth for the Port and beyond.

## **LIVING WAGE**

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations"), do not apply to these agreements because the proposed outside legal counsel and consulting firms are not involved in a Port Aviation or Port Maritime business.

## **ENVIRONMENTAL**

The proposal to award outside counsel/consultant agreements for FY2017-18, and to re-allocate amounts if necessary, was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA), and the Port CEQA Guidelines. General policy and procedure making are not projects under CEQA. Furthermore, the general rule in Section 15061(b) (3) of the CEQA Guidelines states that CEQA applies only to activities that have a potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that authorizing the outside counsel/consultant agreements or reallocating amounts will result in a physical change in the environment; therefore, those actions are not subject to CEQA.

## **GENERAL PLAN**

This action does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

## **OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)/ PROFESSIONAL LIABILITY INSURANCE PROGRAM (PLIP)**

This action is not subject to the Port's Owner Controlled Insurance Program (OCIP) or Professional Liability Insurance Program (PLIP) as it is not a capital improvement construction project or design project supporting such construction.

## **OPTIONS**

- 1) Authorize the Port Attorney to enter into outside counsel and consultant agreements to obtain special legal services with all of the firms listed in Attachment A in the amounts specified for each law firm and consultant per matter as reflected in attorney-client privileged communications during the Board meeting of May 18, 2017, (with the increase for Orrick as described herein) for a total contracting amount of \$4,825,000 and subject to adjustments under the Port Attorney's

contracting authority for Fiscal Year 2017-18 with one firm providing services over Fiscal Year 2017-18 and 2018-19.

- 2) Authorize the Port Attorney to enter into outside counsel and consultant agreements to obtain special legal services with some, but not all of the firms listed in Attachment, for amounts to be determined by the Board.
- 3) Do not authorize the requested action, and therefore, the Port Attorney would enter into legal services contracts pursuant to his authority under the Board's Bylaws and Administrative Rules.

### **RECOMMENDATION**

It is recommended that the Board adopt a resolution authorizing the Port Attorney to enter into outside counsel/consultant agreements to obtain special legal services from the firms/companies listed in Attachment A in the amounts specified for each firm per matter as reflected in the attorney-client privileged communications during the Board meeting of May 18, 2017, (with the increase for Orrick as described herein) for the initial total amount of \$4,825,000 for Fiscal Year 2017-18 with one firm providing services over Fiscal Year 2017-18 and Fiscal Year 2018-19 and to waive formal competitive bidding. It is further recommended that the Board find and determine that executing retention or other agreements with the firms/companies listed in Attachment A will constitute agreements for obtaining professional, technical and specialized services that are temporary in nature and that it is in the best interest of the Port to secure such services. The contract amounts may be adjusted during the fiscal year by the Port Attorney for amounts under his contracting authority or by further action of the Board.

**ATTACHMENT A  
PORT ATTORNEY'S OFFICE  
PROPOSED OUTSIDE COUNSEL CONSULTANT BUDGET  
FOR FY17-18**

CONFIDENTIAL: ATTORNEY-  
CLIENT AND ATTORNEY WORK-  
PRODUCT PRIVILEGED;  
EXEMPT FROM DISCLOSURE

LAW FIRM/CONSULTING FIRM/COST ITEMS	MATTER NAMES
Anderson & Krieger LLP (Cambridge, MA)	
	Aviation Regulatory Matters
Andrada & Associates (Oakland)	
	Personal Injury/Property Damage Claims/Litigation
Archer Norris (Walnut Creek)	
	Arreola v. Port
	Kane v. Port
	Personal Injury/Property Damage Claims/Litigation
Baseline Environmental Consulting (Emeryville)	
	Technical Expert Services on GASB 49 Cost Recovery Matters (Various Site)
	Environmental Compliance/GASB 49 Management
Briscoe Ivester & Bazel (San Francisco)	
	Tideland Trust
Bryan Cave (Chicago, IL)	
	PRP Cost Recovery
	Amtrak Elevator Hydraulic Release
Burke Williams & Sorenson (Oakland)	
	Port v. Marilyn Hartman
Churchwell White (Sacramento)	
	Hearing Officer
Dawn L. Crater (Richmond)	
	General Insurance Support/Recoveries
	Recoveries
Donahue Fitzgerald (Oakland)	
	Terminal Operators (PA, SSAT, etc) Lease/Contract Disputes and Claims

**ATTACHMENT A  
PORT ATTORNEY'S OFFICE  
PROPOSED OUTSIDE COUNSEL CONSULTANT BUDGET  
FOR FY17-18**

CONFIDENTIAL: ATTORNEY-  
CLIENT AND ATTORNEY WORK-  
PRODUCT PRIVILEGED;  
EXEMPT FROM DISCLOSURE

LAW FIRM/CONSULTING FIRM/COST ITEMS	MATTER NAMES
	Real Estate/Leasing Advice (Maritime & CRE)
	Real Estate/Leasing Advice (Aviation)
	Oakland Army Base/Seaport Logistics Center Real Estate Advice
	Intellectual Property
	Real Estate Litigation
<b>Drinker Biddle &amp; Reath LLP (Los Angeles)</b>	
	Benefits
<b>Edgcomb Law Group (San Francisco)</b>	
	Schnitzer Steel
<b>Farella Braun + Martel LLP (San Francisco)</b>	
	General Risk Management and Cost Recovery Advice
	GASB 49 Cost Recovery Claims Against Insurance Carriers/Insurance Advice Related to Pollution Conditions
	Oak to Ninth
	EBMUD/Thibodeaux
	Stormwater
<b>Fenwick &amp; West LLP (Mountain View)</b>	
	Employment Advice
<b>Gordon Creed Kelly Holl &amp; Sugerman (San Francisco)</b>	
	David Mack v. Port
<b>Gordon &amp; Polland LLP (Oakland)</b>	
	Litigation/Claim Strategies and Appeals
<b>Gordon &amp; Rees (Oakland)</b>	
	Claims
	GASB49
<b>Hanna Brophy MacLean McLeer &amp; Jensen, LLP (Oakland)*</b>	

**ATTACHMENT A  
PORT ATTORNEY'S OFFICE  
PROPOSED OUTSIDE COUNSEL CONSULTANT BUDGET  
FOR FY17-18**

CONFIDENTIAL: ATTORNEY-  
CLIENT AND ATTORNEY WORK-  
PRODUCT PRIVILEGED;  
EXEMPT FROM DISCLOSURE

LAW FIRM/CONSULTING FIRM/COST ITEMS	MATTER NAMES
	Workers' Compensation
<b>Hanson Bridgett (San Francisco)</b>	
	Employment Advice
	Employment Claims
	Sherri "Jean" Parks v. Port
<b>Jarvis Fay Doporto &amp; Gibson LLP (Oakland)</b>	
	Public Works Contracting Advice (General)
	Bid/Proposal Protests Advice
	7th Street Grade Separation RFP/Construction Documents
	Fees/taxes/assessments
<b>Jenner &amp; Block (Los Angeles)</b>	
	Litigation/Claims/Advice
	Drinking Water
	Air Quality
<b>Jonathan Kara (Walnut Creek)</b>	
	Research
	GASB 49 (Cost Recovery Matters)
	Environmental Compliance/GASB 49 Management
<b>JSP Associates (San Francisco)</b>	
	Trespass & Business Interruption
<b>Keker &amp; Van Nest LLP (San Francisco)</b>	
	Litigation
<b>Liebert Cassidy &amp; Whitmore (Los Angeles)</b>	
	Labor/Employment Advice
	Labor/Employment Claims



**ATTACHMENT A**  
**PORT ATTORNEY'S OFFICE**  
**PROPOSED OUTSIDE COUNSEL CONSULTANT BUDGET**  
**FOR FY17-18**

CONFIDENTIAL: ATTORNEY-  
CLIENT AND ATTORNEY WORK-  
PRODUCT PRIVILEGED;  
EXEMPT FROM DISCLOSURE

LAW FIRM/CONSULTING FIRM/COST ITEMS	MATTER NAMES
Lubin Olson & Niewiadomski (San Francisco)	
	Personal Injury/Property Damage Claims/General Commercial Litigation/Operational Continuity/Security
Meyers Nave (Oakland)	
	Construction Claims and Litigation
Mullen & Filippi, LLP (Oakland)*	
	Workers' Compensation
Nancy Williams (San Francisco)	
	Records Retention Schedule Advice and Port Attorney Migration to Electronic Records/Filing Projects
Nixon Peabody (San Francisco)	
	Powerly Supply Advice - Maritime Area
	Power Supply Claims
Nossaman LLP (San Francisco)	
	Railroad/Surface Transportation Board Advice
O'Melveny & Myers LLP (Los Angeles)	
	Railyard Operator Contract
	Bond/Finance Matters
Orrick Herrington & Sutcliff (San Francisco)	
	Bond/Tax/Finance Matters
	2017 Bond Transaction (paid out of bond proceeds) \$220,000 previously approved by the Board*
Perkins Coie LLP (San Francisco)	
	General CEQA Advice
	General CEQA Litigation
	Real Estate
	Administrative/Regulatory Advice & Claims
Ramsey Law Group (Lafayette)	

**ATTACHMENT A  
PORT ATTORNEY'S OFFICE  
PROPOSED OUTSIDE COUNSEL CONSULTANT BUDGET  
FOR FY17-18**

CONFIDENTIAL: ATTORNEY-  
CLIENT AND ATTORNEY WORK-  
PRODUCT PRIVILEGED;  
EXEMPT FROM DISCLOSURE

LAW FIRM/CONSULTING FIRM/COST ITEMS	MATTER NAMES
	General Commercial Collection and Litigation (Unlawful Detainers, etc.)
	Krauss v. Port, et al.
<b>Renne Sloan Holtzman &amp; Sakai (San Francisco)</b>	
	Labor Negotiations/Labor Advice
<b>Richard Thorson Graves &amp; Royer LLP (Oakland)*</b>	
	Workers' Compensation
<b>Rudder Law Group (Alameda)</b>	
	Aviation Regulations and Permitting
	EPA Administrative Order/Thibodeaux
<b>Saul Ewing (D.C.)</b>	
	Shipping Act Advice; Terminal Leasing Efficiency Issues/Operations (Shipping Act/FMC Advice)
	Maritime Claims
<b>Wendel Rosen Black &amp; Dean (Oakland)</b>	
	Clean Water/Environmental Regulatory Advice
	PRP Cost Recovery
	Utilities
	General Construction
	Construction Claims and Litigation
<b>Wiley Price &amp; Radulovich LLP (Alameda)*</b>	
	Labor Negotiations (over 2 fiscal years) Previously approved by the Board

LAW FIRMS NOT CODED TO LEGAL BUDGETS\*