

AGENDA REPORT

Resolution: Authorization to Establish Fiscal Year 2018-19 Outside Counsel and Consultant Retention Agreements with Selected Law Firms and Consultants and Related Actions. **(Port Attorney)**

MEETING DATE: 6/28/2018

AMOUNT: \$5,895,000 (Fiscal Year 2018-19)

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 2018-19 in an initial total amount of \$5,895,000, 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.

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.

The actual spending on outside legal services (and settlements) during the last 4 years has been lower than the historical average in the last ten years. During Fiscal Year 16-17, the Port spent a total of \$2,217,458 on outside legal counsel, legal consultants, legal settlements, and the Port's labor negotiator. The Port spent the following amounts for

outside legal services (including settlement payments) over the last 10 and three quarters fiscal years:

• Partial FY17-18 (7/1/17-4/30/18)	\$1,710,249
• FY16-17	\$2,217,458
• FY15-16	\$3,381,036
• FY14-15	\$2,739,776
• FY13-14 (1 st 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 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.

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 29% 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 FY18-19 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 Business Plan (2018-2022).

<https://www.portofoakland.com/wp-content/uploads/Port-of-Oakland-Strategic-Plan.pdf>

- Goal: Grow Net Revenues.

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.

SUSTAINABILITY

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.

ENVIRONMENTAL

The proposal to award outside counsel/consultant agreements for FY2018-19, 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 service agreements are not subject to the Port's Owner Controlled Insurance Program (OCIP) as professional services are not construction activities.

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 24, 2018, for a total contracting amount of \$5,895,000 and subject to adjustments under the Port Attorney's contracting authority for Fiscal Year 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 24, 2018, for the initial total amount of \$5,895,000 for 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.