



SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY
STAFF REPORT

Item No.
12

Meeting Date: **OCTOBER 6, 2011**

Subject:

Approve and Authorize the President/CEO to Execute a Fourteenth Amendment to the Agreement with Alston & Bird, LLP

Recommendation:

Adopt Resolution No. 2011-0121, approving and authorizing the President/CEO to execute a Fourteenth Amendment to the Agreement for professional legal services between the Authority and Alston & Bird, LLP, extending the term for one year to expire no later than November 21, 2012.

Background/Justification:

On December 20, 2004 the Authority entered into a consulting agreement with Weston Benshoof Rochefort Rubalcava & McCuish, LLP to provide professional legal services in connection with environmental issues, including issues relating to water quality, storm water, hazardous contaminants, remediation, liability, and other related matters as directed by the Authority's General Counsel. The amount of compensation under the agreement was \$100,000.

In February 2005, the Authority was named as a Third Party Defendant in the case entitled San Diego Unified Port District v. TDY Industries, Inc., et al., [United States District Court Case No. 03 CV 1146-B] wherein TDY Industries and others alleged that the Authority contributed to the environmental contamination at the Teledyne Ryan Site. On March 24, 2005, the Agreement was amended to identify Alan Hearty as an attorney who would be providing work under the Agreement [First Amendment]. On April 11, 2005 the Board authorized an amendment to the Agreement to increase the contract amount by \$200,000 [Second Amendment]. On June 10, 2005, the Agreement was amended to add Kyle Ostergard as an attorney who would be providing work under the Agreement [Third Amendment]. On July 7, 2005, the Board authorized an amendment to the Agreement to increase the contract amount by \$300,000 for a total not to exceed amount of \$600,000 [Fourth Amendment]. On October 8, 2005, the Board authorized an amendment to the Agreement to increase the contract amount by \$300,000 for a total amount not to exceed \$900,000 [Fifth Amendment]. On November 7, 2005, the Board authorized an amendment to the Agreement to add Michael Hartley and Erin Curran as attorneys who would be providing work under the Agreement [Sixth Amendment]. On November 16, 2005, the Authority exercised its option to extend the term of the Agreement by one year to expire no later than November 21, 2006. On April 3, 2006, the Board authorized an amendment to the Agreement to add Bowe Kurowski as an attorney and increase the contract amount by \$350,000 for a total amount not to exceed \$1,250,000 [7th Amendment]. On October 6, 2006, the Board authorized an

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amendment to extend the term of the Agreement to expire no later than November 21, 2007 and increase the compensation amount by \$200,000 for a total amount not to exceed \$1,550,000 [Eighth Amendment]. On April 5, 2007, the Board authorized an amendment to the Agreement to increase the compensation by \$300,000 for a total amount not to exceed \$1,850,000 [Ninth Amendment]. On November 1, 2007, the Board authorized an amendment to extend the term by one year to expire no later than November 21, 2008 [Tenth Amendment]. On July 10, 2008, the Board authorized an amendment to extend the term of the Agreement to expire no later than November 21, 2009, increase the compensation by \$300,000 for a total amount not to exceed \$2,150,000 and memorialize that Weston Benshoof had merged with the law firm of Alston & Bird LLP ("Law Firm") [Eleventh Amendment]. On November 5, 2009, the Board authorized an amendment to the Agreement to extend the term to expire no later than November 21, 2010 and increase the compensation amount by \$100,000 for a total amount not to exceed \$2,250,000 [Twelfth Amendment]. On November 4, 2010, the Board authorized an amendment to extend the term of the Agreement by one year to expire no later than November 21, 2011 [Thirteenth Amendment].

This Fourteenth Amendment is needed so that Law Firm can continue to represent the Authority on matters related to the remediation of the former Teledyne Ryan site and in matters related to the settlement agreement reached by the parties to the underlying litigation. Law Firm has intimate and special knowledge of the underlying litigation, the settlement agreement which resulted from the litigation, the terms and conditions which are ongoing, the environmental contamination of the site, the Cleanup and Abatement Order (CAO) issued by the Regional Water Quality Control Board (RWQCB) which also continues to govern the site. Although the litigation is settled, the terms and conditions of the settlement agreement continue to govern the parties during the demolition and clean up of the site. In addition, the CAO issued by the RWQCB is still in effect and governs the site. Due to Law Firm's knowledge of these on-going issues and its thorough and historical knowledge of the site, staff believes it is in the Authority's best interest to continue to retain Law Firm to handle the specific matters set forth above related to the former TDY Site. It should be noted that there has been no increase in compensation to this Agreement since 2009.

Fiscal Impact:

Funds for this Agreement are in the FY2012 budget. This amendment does not request additional funds.

Authority Strategies:

This item supports one or more of the Authority Strategies, as follows:

- Community Strategy
 Customer Strategy
 Employee Strategy
 Financial Strategy
 Operations Strategy

Environmental Review:

- A. CEQA Review. This Board action is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act (CEQA), as amended. 14 Cal. Code Regs. §15378. This Board action is not a "project" subject to CEQA. Pub. Res. Code §21065.
- B. California Coastal Act Review: This Board action is not a "development" as defined by the California Coastal Act. Cal. Pub. Res. Code §30106.

Equal Opportunity Program:

The Authority's small business program promotes the use of small, local, disadvantaged, and other business enterprises, on all contracts, to provide equal opportunity for qualified firms. By providing education programs, making resources available, and communicating through effective outreach, the Authority strives for diversity in all contracting opportunities.

The Authority has a Disadvantaged Business Enterprise ("DBE") Plan as required by the Department of Transportation, 49 CFR Part 26. The DBE Plan calls for the Authority to submit an annual over-all goal for DBE participation on all federally funded projects.

This project does not use federal funds; therefore, it will not be applied toward the Authority's over-all DBE goal.

Prepared by:

AMY GONZALEZ
DIRECTOR, COUNSEL SERVICES

RESOLUTION NO. 2011-0121

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, APPROVING AND AUTHORIZING THE PRESIDENT/CEO TO EXECUTE A FOURTEENTH AMENDMENT TO THE AGREEMENT FOR PROFESSIONAL LEGAL SERVICES BETWEEN THE AUTHORITY AND ALSTON & BIRD, LLP, EXTENDING THE TERM BY ONE YEAR TO EXPIRE NO LATER THAN NOVEMBER 21, 2012

WHEREAS, on December 20, 2004 the Authority entered into a consulting agreement with Weston Benschopf Rochefort Rubalcava & McCuish, LLP to provide professional legal services in connection with environmental issues, including issues relating to water quality, storm water, hazardous contaminants, remediation, liability, and other related matters as directed by the Authority's General Counsel. The amount of compensation under the agreement was \$100,000.

WHEREAS, in February 2005, the Authority was named as a Third Party Defendant in the case entitled San Diego Unified Port District v. TDY Industries, Inc., et al., [United States District Court Case No. 03 CV 1146-B] wherein TDY Industries and others allege that the Authority contributed to the environmental contamination at the Teledyne Ryan Site.

WHEREAS, the Agreement has been amended thirteen times in the following manner:

- On March 24, 2005, the Agreement was amended to identify Alan Hearty as an attorney who would be providing work under the Agreement [First Amendment];
- On April 11, 2005 the Board authorized an amendment to the Agreement to increase the contract amount by \$200,000 [Second Amendment];
- On June 10, 2005, the Agreement was amended to add Kyle Ostergard as an attorney who would be providing work under the Agreement [Third Amendment];
- On July 7, 2005, the Board authorized an amendment to the Agreement to increase the contract amount by \$300,000 for a total amount not to exceed amount of \$600,000 [Fourth Amendment];
- On October 8, 2005, the Board authorized an amendment to the Agreement to increase the contract amount by \$300,000 for a total amount not to exceed \$900,000 [Fifth Amendment];

- On November 7, 2005, the Board authorized an amendment to the Agreement to add Michael Hartley and Erin Curran as attorneys who would be providing work under the Agreement [Sixth Amendment];
- On April 3, 2006, the Board authorized an amendment to the Agreement to add Bowe Kurowski as an attorney and increase the contract amount by \$350,000 for a total amount not to exceed \$1,250,000 [7th Amendment];
- On October 6, 2006, the Board authorized an amendment to extend the term of the Agreement to expire no later than November 21, 2007 and increase the compensation amount by \$200,000 for a total amount not to exceed \$1,550,000 [Eighth Amendment];
- On April 5, 2007, the Board authorized an amendment to the Agreement to increase the compensation by \$300,000 for a total amount not to exceed \$1,850,000 [Ninth Amendment];
- On November 1, 2007, the Board authorized an amendment to extend the term by one year to expire no later than November 21, 2008 [Tenth Amendment];
- On July 10, 2008, the Board authorized an amendment to extend the term of the Agreement to expire no later than November 21, 2009, increase the compensation by \$300,000 for a total amount not to exceed \$2,150,000 and memorialize that Weston Benshoof had merged with the law firm of Alston & Bird LLP ("Law Firm") [Eleventh Amendment];
- On November 5, 2009, the Board authorized an amendment to the Agreement to extend the term to expire no later than November 21, 2010 and increase the compensation amount by \$100,000 for a total not to exceed \$2,250,000 [Twelfth Amendment];
- On November 4, 2010, the Board authorized an amendment to extend the term of the Agreement by one year to expire no later than November 21, 2011 [Thirteenth Amendment]; and

WHEREAS, this Fourteenth Amendment is needed so that Law Firm can continue to represent the Authority on matters specifically related to the remediation of the former Teledyne Ryan site and in matters related to the settlement agreement reached by the parties to the underlying litigation; and

WHEREAS, Law Firm has intimate knowledge of the underlying litigation, the settlement agreement which resulted from the litigation (the terms and conditions of which are ongoing), the environmental contamination of the site, and the Cleanup and Abatement Order (CAO) issued by the Regional Water Quality Control Board (RWQCB) which also continues to govern the site; and

WHEREAS, due to Law Firm's knowledge of these on-going issues and their thorough and historical knowledge of the site, the Board finds it is in the Authority's best interest to continue to retain Law Firm to handle the specific matters set forth above related to the former TDY Site.

NOW THEREFORE BE IT FURTHER RESOLVED that the Board hereby approves and authorizes the President/CEO to execute a Fourteenth Amendment to the Agreement for professional legal services between the Authority and Alston & Bird, LLP, extending the term by one year to expire no later than November 21, 2012.

BE IT FURTHER RESOLVED that this Board action is not a project" as defined by the California Environmental Quality Act (CEQA), Cal. Pub. Res. Code §21065; nor is it a "development" as defined by the California Coastal Act, Cal. Pub. Res. Code §30106.

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 6th day of October, 2011, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

TONY R. RUSSELL
DIRECTOR, CORPORATE SERVICES/
AUTHORITY CLERK

APPROVED AS TO FORM:

BRETON K. LOBNER
GENERAL COUNSEL

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