



SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY
STAFF REPORT

Item No.
14

Meeting Date: **NOVEMBER 4, 2010**

Subject:

Approve a Thirteenth Amendment to the Agreement with Alston & Bird LLP and Authorize the President/CEO to Sign the Thirteenth Amendment to the Agreement

Recommendation:

Adopt Resolution No. 2010-0121, approving a Thirteenth Amendment to the Agreement for Professional Legal Services between the Authority and Alston & Bird LLP and authorizing the President/CEO to execute the Thirteenth Amendment to the Agreement extending the term of the Agreement by one year to expire no later than November 21, 2011.

Background/Justification:

On December 20, 2004, the Authority entered into an agreement with Weston Benshoof Rochefort Rubalcava & McCuish, LLP ("Weston Benshoof") to provide professional legal services in connection with environmental issues, including issues relating to water quality, storm water, hazardous contaminants, remediation, environmental 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 allege 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 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 of \$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

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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 who would be providing work under the Agreement and to increase the contract amount by \$350,000 for a total amount of \$1,250,000 [Seventh Amendment]. On October 6, 2006, the Board authorized an amendment to the Agreement to extend the term of the Agreement to expire no later than November 21, 2007 and increase the compensation by \$200,000 for a total amount of \$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 of \$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 of \$2,150,000 and memorialize that Weston Benshoof had merged with the law firm of Alston & Bird ("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 of \$2,250,000 [Twelfth Amendment].

This Thirteenth Amendment is needed so that Law Firm can continue to represent the Authority during the remediation of the former Teledyne Ryan site and in matters related to the underlying litigation and resulting settlement agreement. The 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 on the site, the Cleanup and Abatement Order (CAO) from the Regional Water Quality Control Board which continues to govern the site, and the insurance bad-faith litigation settlement with Argonaut which arose due to the underlying litigation. Although the underlying litigation is settled, the settlement agreement terms and conditions still govern the actions of the parties, the CAO is still in effect and the terms and conditions of the settlement agreement from the Argonaut litigation are still in effect. Due to Law Firm's knowledge of these on-going issues and their historical knowledge of the site, staff believes it is in the Authority's best interest to continue to retain Law Firm to handle matters associated with the former Teledyne Ryan site.

Fiscal Impact:

Funds for this Agreement are in the FY2011 budget.

Environmental Review:

- A. 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. 2010-0121

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY APPROVING A THIRTEENTH AMENDMENT TO THE AGREEMENT FOR PROFESSIONAL LEGAL SERVICES BETWEEN THE AUTHORITY AND ALSTON & BIRD LLP, AND AUTHORIZING THE PRESIDENT/CEO TO EXECUTE THE THIRTEENTH AMENDMENT TO THE AGREEMENT, EXTENDING THE TERM OF THE AGREEMENT BY ONE YEAR TO EXPIRE NO LATER THAN NOVEMBER 21, 2011

WHEREAS, on December 20, 2004, the Authority entered into an agreement with Weston Benshoof Rochefort Rubalcava & McCuish, LLP ("Weston Benshoof") to provide professional legal services in connection with environmental issues, including issues relating to water quality, storm water, hazardous contaminants, remediation, environmental liability, and other related matters as directed by the Authority's General Counsel; and

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 other allege that the Authority contributed to the environmental contamination at the Teledyne Ryan Site; and

WHEREAS, the Agreement has been amended twelve times in the following manner and for the following reasons:

- 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 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 of \$900,000 [Fifth Amendment];

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- On November 7, 2005, the Board authorized an amendment to the Agreement to add Michael Hartley and Erin Curran as attorneys 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 who would be providing work under the Agreement and to increase the contract amount by \$350,000 for a total amount of \$1,250,000 [Seventh Amendment];
- On October 6, 2006, the Board authorized an amendment to the Agreement to extend the term of the Agreement to expire no later than November 21, 2007 and increase the compensation by \$200,000 for a total amount of \$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 of \$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 of \$2,150,000 and memorialize that Weston Benshoof had merged with the law firm of Alston & Bird ("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 of \$2,250,000 [Twelfth Amendment]; and

WHEREAS, the TDY Litigation was resolved pursuant to a Settlement Agreement, the terms, conditions and obligations of which remain ongoing; and

WHEREAS, TDY is subject to a Cleanup and Abatement Order (CAO) issued by the Regional Water Quality Control Board, the terms and conditions of which are ongoing and which the Law Firm is intimately familiar with; and

WHEREAS, the Law Firm represented the Authority in settlement negotiations resulting from litigation brought by the Port District against various insurance companies as a result of a denial of insurance coverage in the underlying litigation, the terms of which are ongoing; and

WHEREAS, Law Firm has intimate knowledge of the-above cited issues and it would be in the best interest of the Authority to continue to retain Law Firm to assist in the handling of these ongoing matters.

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NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves a Thirteenth Amendment to the Agreement for professional legal services between the Authority and Alston & Bird LLP, authorizing the President/CEO to execute a Thirteenth Amendment to the agreement, extending the term by one year to expire no later than November 21, 2011.

BE IT FURTHER RESOLVED 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 4th day of November, 2010, 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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