

Item No.: 8C\_Supp  
Date of Meeting: January 4, 2022

# Additional Funding Authorization and 1<sup>st</sup> Amendment to Contract No. 071641 for Legal Services with Phillips Burgess



**THE NORTHWEST**  
SEAPORT ALLIANCE  
SEATTLE + TACOMA

Presenter Name: Dana Henderson  
NWSA General Counsel

## ACTION REQUESTED

Request Managing Members' authorization for the First Amendment to Contract #071641 with the Phillips Burgess firm to add \$50,000 of contract authorization.

# Phillips Burgess Outside Real Estate Counsel Services (Contract #071641)

- In January, 2022, Phillips Burgess firm hired long-time Port / NWSA transactional lawyer with deep institutional knowledge of NWSA.
- As result of this hire, NWSA sought to continue to retain this attorney's services for the NWSA, and signed a contract with the firm for an amount within the CEO's delegated authority.
- Phillips Burgess firm hired to provide on-call legal services to NWSA when not in conflict with their support of Port of Tacoma.
- A matter assigned to this firm included the initial analysis and support of the T30 contract in light of contractual interpretation dispute with tenant over the Terminal 30 failed substation.

# Dispute with T30 Tenant

- Terminal 30 tenant SSA triggered Dispute with NWSA, claiming it was NWSA responsibility to pay all expenses relating to T30 substation failure.
- NWSA disputed SSA's position and countered, seeking SSA contribution to NWSA expenses.
- Phillips Burgess firm was ultimately hired to litigate matter with SSA given the firm's prior work in analyzing T30 lease obligations.
- Parties prepared this matter for arbitration, including extensive discovery, multiple depositions, witness preparation, expert opinions.
- On first day of arbitration, Parties resolved dispute for \$3M to be paid to NWSA. MMs approved this settlement in December, 2022.

# Closing out Contract #071641

- This First Amendment will pay for the remaining fees needed to close out the Terminal 30 Dispute.
- An additional \$45,000 is needed to pay final “wrap up” costs for litigation costs, fees, expenses. These were expected, but not tabulated earlier.
- Phillips Burgess firm has recently merged, so Contract #071641 will be closed with payment of these final invoices.

# Overview of Legal Spend Against Contract #071641

Category of Work	Approximate Amount (through 11/30/22)
<b>Day to Day Transactional Legal Assistance - not related to T30</b> (For example: on-call legal support of various NWSA real estate transactions – including Glovis multi-part deal, BNSF lease, W Sitcum issues, PRS , Puyallup 3 <sup>rd</sup> Berth)	<b>\$100,342.50</b>
<b>Litigation with SSA Re: T30 (resulting in \$3M Settlement)</b>	
Attorneys fees (Evaluation of claims and viability of contract interpretation claims (disputed project items); preparation and participation in arbitration, extensive discovery)	\$215,871
Expert fees	\$5593.51
Arbitration Fee	\$15,152.50
Other Costs (deposition transcripts, mileage, shipping, Fed Ex, etc.	\$9461.61
<b>T30 Litigation total cost:</b>	<b>\$246,078.50</b>

# Additional Funds Needed to Close Contract #071641

<b>Original Contract Amount</b>	<b>\$300,000</b>
Proposed Amendment #1	\$50,000
<b>Total Contract amount</b>	<b>\$350,000</b>

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