



Midpeninsula Regional
Open Space District

R-11-119
Meeting 11-33
December 14, 2011

AGENDA ITEM 4

AGENDA ITEM

Approve the Interim General Counsel Employment Agreement and Associated Resolution for Legal Services During the Vacancy in this Position

BOARD APPOINTEE EVALUATION AD HOC COMMITTEE RECOMMENDATION

1. Approve the attached employment agreement for temporary services in the General Counsel position until appointment of new General Counsel.

SUMMARY

At the meeting of October 19, 2011, the Board of Directors approved the recommendations of the Board Appointee Evaluation Ad Hoc Committee (Committee) for the recruitment process, candidate profile, and recruitment timeline to fill the position of General Counsel which will be vacant upon the incumbent's retirement on December 30, 2011. The Board tasked the Committee to continue to work with the recruitment firm of Peckham and McKenney on the recruitment process (Report R-11-107). The Committee is engaged in the recruitment process and awaiting the application deadline of December 2, 2011, to begin the initial screening process. The approved timeline seeks to have a selection made in January and the appointed counsel to begin employment in February. The Board also approved the Committee's recommended transition plan to fill the vacant position until appointment of a new General Counsel. The attached Interim General Counsel Employment Agreement will employ Susan Schectman as Interim General Counsel on a post-retirement basis at the current salary and without benefits. The Board may terminate the Agreement at any time.

DISCUSSION

At the Special meeting held on October 19, 2011, the Board approved the Board Appointee Evaluation Ad Hoc Committee recommendations for a General Counsel recruitment process, candidate profile, and timeline (Report R-11-28).

The approved timeline was adopted to enable a robust search which will require full Board interviews in January. Once the Board has conducted interviews and identified its top candidate, time will be required to negotiate a contract, conduct a thorough reference and background check, and allow the selected finalist time to provide notice to his or her current employer and prepare to begin District employment.

This required a transition plan to insure that there is not a gap between the vacancy in the General Counsel position which will begin on December 31, 2011, and the appointment of the new counsel. The Committee discussed the optimum transition plan and recommended that the current General Counsel continue to serve until the appointment of her successor.

The incumbent would serve as a post-retirement employee for the short transition period. This plan would result in net cost savings of \$4,749.00 per month to the District since the Board would not be employing a regular District employee with associated benefit costs.

Approval of the attached Interim General Counsel Employment Agreement will implement this transition plan. The Agreement will also allow the Board the option of continuing Ms. Schectman's employment for a short period after the appointment of new counsel if needed to assist the new counsel in his or her transition into this position. The terms and conditions of the recommended Employment Agreement are virtually identical to the current agreement with the exception that all benefits have been deleted and other appropriate revisions added to reflect the temporary nature of this Agreement.

FISCAL IMPACT

The fiscal impact of the transition plan, if approved, will result in a net cost savings of \$4,749 per month of service derived by subtracting all benefits from General Counsel's current salary.

PUBLIC NOTICE

Public notice of this Agenda item was provided pursuant to the Brown Act. No additional notice is required.

CEQA COMPLIANCE

This proposed action is not a project under the California Environmental Quality Act (CEQA) and no environmental review is required.

NEXT STEPS

If the Board approves the Committee's recommendation, the President of the Board will execute the employment agreement. The Committee will continue to work with the recruiter on the initial selection process and further steps in order to return this matter to the full Board consistent with the timeline.

Attachments:

1. Resolution Approving Interim General Counsel Employment Agreement
2. Interim General Counsel Employment Agreement

Prepared by:
Board Appointee Evaluation Ad Hoc Committee:
Directors Cyr, Hassett, and Riffle

Contact person:
Curt Riffle, Chair

RESOLUTION NO. XX

**A RESOLUTION OF THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT
APPOINTING SUSAN SCHECTMAN AS INTERIM GENERAL COUNSEL
PER GOVERNMENT CODE SECTION 21221(h)**

WHEREAS, Susan Schectman (“Schectman”) will retire from the position of General Counsel for the Midpeninsula Regional Open Space District, effective December 30, 2011;

WHEREAS, Schectman has specialized skills and knowledge crucial to the continued successful operation of the District;

WHEREAS, the District is the process of recruiting a qualified replacement for Schectman;

WHEREAS, the District would like to retain Schectman’s services as Interim General Counsel to allow the District sufficient time to obtain a qualified replacement;

WHEREAS, Schectman possesses necessary and specialized skills to represent the District during this time of transition, and to prevent stoppage of that vital public service, as a licensed attorney and having served as General Counsel to the District for seventeen years; and,

WHEREAS, the Board of Directors hereby appoints Susan Schectman to the position of Interim General Counsel under Government Code section 21221(h), a position deemed to be of limited duration and requiring specialized skills, effective December 31, 2011, and for a period not to exceed twelve (12) months, and subject to a limit of 960 hours in a fiscal year.

THEREFORE, BE IT RESOLVED by the Board of Directors of the Midpeninsula Regional Open Space District that Susan Schectman is appointed Interim General Counsel, effective December 31, 2011, for a period not to exceed twelve (12) months ending no later than December 30, 2012, based on the terms described in the “Interim General Counsel Retired Annuitant Employment Agreement” attached hereto.

PASSED AND ADOPTED this 14th day of December, 2011 by the following vote to wit:

AYES:

NAYS:

ABSENT:

ABSTAIN:

**INTERIM GENERAL COUNSEL RETIRED ANNUITANT EMPLOYMENT
AGREEMENT**

This Employment Agreement (“Agreement”) is entered into this 14th day of December 2011, by and between Midpeninsula Regional Open Space District, a California public agency (“District”), and Susan M. Schectman (“Schectman”).

WHEREAS, Schectman will be retiring as the District’s General Counsel after 14 years of service effective December 30, 2011, so that the position of General Counsel will be vacant as of that date;

WHEREAS, the District’s Board of Directors desires to employ Schectman on a temporary basis as an Interim General Counsel because of her specialized skills, as allowed by the California Public Employment Retirement System law for retired annuitants, until such time that the District is able to complete the General Counsel recruitment;

WHEREAS, the District’s Board of Directors deems that the position of Interim General Counsel requires specialized skills; and

WHEREAS, the District is recruiting for a new, permanent General Counsel, the recruitment is expected to be completed in less than 12 months, but the recruitment is not yet completed.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. ***Designation of Interim District General Counsel***

SUSAN M. SCHECTMAN is appointed and temporarily employed as legal counsel for the District. The designation of the position is Interim General Counsel and will begin effective December 31, 2011.

2. ***Essential Duties***

The Interim General Counsel shall perform her duties consistent with due diligence, according to the highest and most professional standards, and in compliance with all federal, state and local laws, ordinances, rules and regulations which are applicable to or associated with the performance of such duties.

A. ***Administrative Duties***

- 1) The Interim General Counsel shall attend all regular and special meetings of the District Board of Directors as needed. The Interim General Counsel’s duties in this connection shall be to render advice and opinions with respect to legal matters which may arise during such meetings, except legal matters which may pertain to proceedings wherein specialized legal services are to be provided by special counsel or which do not fall within the Interim General Counsel’s scope of duties.

- 2) The Interim General Counsel shall also attend meetings of committees and staff of the District when requested to do so by the District Board of Directors or the District General Manager.
- 3) When requested to do so by the District Board of Directors or District General Manager, the Interim General Counsel shall prepare and review resolutions, notices, contracts, leases, ordinances and other legal documents and papers in matters pertaining to the District, and shall also examine for legal sufficiency all documents submitted to her by the District.
- 4) The Interim General Counsel shall perform legal research as required to attend to the legal needs of the District and shall review legislation and court decisions to determine their effect upon District affairs.
- 5) The Interim General Counsel shall cooperate with and assist the District, its officers, directors, agents and employees on all general legal matters pertaining to the District, including the enforcement of District laws, ordinances and codes.
- 6) The Interim General Counsel shall also perform such other related and appropriate legal services for the District as may be requested by the District Board of Directors or the District General Manager, including continuing to supervise the Assistant General Counsel and the Legal Administrative Assistant.

B. *Litigation Duties*

When requested to do so by the District Board of Directors, the Interim General Counsel shall represent the District in legal and administrative proceedings to which the District may be a party.

3. *Acting Interim General Counsel*

The Interim General Counsel shall select another person or persons to act as Interim General Counsel to the District in cases when the Interim General Counsel is unable to act due to illness, vacation or other reason. The selection of Acting Interim General Counsel shall be subject to the approval of the District Board of Directors when the appointment is expected to exceed three weeks.

4. *Limitation on Duties*

- A. The Interim General Counsel's position shall be full time and her regular work hours shall be generally 40 hours of service per week, including attendance at Board or Board Committee meetings.

- B. It is recognized that the District normally contracts with special counsel in certain matters pertaining to the District, such as labor relations, worker's compensation, general liability and bond issues. If legal services are provided by special counsel, the Interim General Counsel will be responsible for general oversight in such cases to ensure the District is effectively represented and for providing general legal assistance and support to the special counsel as needed.

5. ***Compensation***

- A. As compensation for the services to be performed hereunder, the Interim General Counsel shall continue to receive an annual salary at the same pre-retirement rate of \$173,064.32, effective December 31, 2011 and payable bi-weekly. This is the published pay rate for the vacant position of General Counsel.
- B. Annual Salary Adjustment and Performance Review: The Board shall not annually review the Interim General Counsel's work performance, nor grant any salary adjustments pursuant to the District's Board Appointee Class Evaluation System.
- C. Meritorious Pay: The District shall not grant the Interim General Counsel meritorious pay, ranging from 0% to 5% over and above the Interim General Counsel's annual salary.
- D. Benefits: The Interim General Counsel shall not receive any of the benefits available to regular full time employees of the District including those set out in the District's "Personnel Policies and Procedures Manual."

Retirement Benefits: The District contracts with the California Public Employees' Retirement System ("PERS") for retirement benefits. Schectman is not entitled to any PERS benefit from the District, and the District will not make any contributions to PERS on behalf of Schectman, as she is a retired annuitant as described in PERS law at Government Code section 21221(h). As a retired annuitant, Schectman is limited to working no more than 960 hours for any and all PERS employers during the period of December 31, 2011 through June 30, 2012. Schectman will report, on a bi-weekly basis, all hours worked for the District on District time sheets or other suitable record, and any hours worked for any other PERS agencies. The District will continue to apply its Salaried Employees Policy to Schectman in her position as Interim General Counsel, except that Schectman does not have or accrue any paid leave of any type in her role as Interim General Counsel. Schectman certifies that all of her time reporting will be an accurate reporting of all hours worked. Schectman agrees and understands that notwithstanding anything in this Agreement, she is not entitled to any compensation from the District after working 960 hours for any and all PERS employers during the period December 31, 2011 through June 2012. If this Agreement is contrary to PERS law, each party shall be solely responsible for any administrative fees that may be assessed to each of them, the District will be responsible for any employer share that may be owing, and Schectman will be

responsible for any employee share that may be owing. If this Agreement is contrary to PERS law, Schectman and the District shall retroactively contribute to Schectman's PERS contribution in the same employee and employer amounts as are were most recently in place as Schectman's employment as General Counsel, including the reporting of special compensation. The parties agree that neither has made any representation regarding the tax consequences of this Agreement, and that each party remains liable for any tax consequences to that party that may flow from this Agreement.

Leave: The Interim General Counsel shall not earn any leave as set forth in either the District's "Personnel Policies and Procedures Manual" or the "Administrative Leave Program for Managers".

- E. Mileage Allowance: The Interim General Counsel will be eligible to receive mileage reimbursement at the applicable District rate for use of her personal vehicle on District business.
- F. Special Compensation. The District shall not pay any special compensation to Schectman.

6. Termination and Severance Pay The Interim General Counsel may terminate this Agreement upon 14 days' written notice to District. District may terminate this Agreement by written notice to the Interim General Counsel at any time. The Interim General Counsel serves at the pleasure of the District Board of Directors and may be discharged without cause. The Interim General Counsel is not eligible for any severance pay under any circumstances.

7. Entire Agreement This instrument and the Resolution Appointing Susan Schectman as Interim General Counsel Per Government Code section 21221(h), contain the entire agreement of the parties and may be changed only by an agreement in writing signed by the parties hereto.

8. Effect of Waiver No waiver by a party of any provision of this Agreement shall be considered a waiver of any other provision or subsequent breach of the same or of any other provision, including the time for performance of any such provision. The exercise by a party of any remedy provided in this Agreement or at law shall not prevent the exercise by that party of any other remedy provided in this Agreement or at law.

9. Supersedes Prior Agreement This Agreement supersedes any and all previous employment agreements and amendments thereto entered into by and between the District and Schectman.

10. Amendment No amendment, alteration, or variation in the terms of this Agreement is valid unless made in writing and signed by both parties.

11. Notices: Any notices to be given by either party to the other shall be made in writing by either personal delivery or by mail, registered or certified, postage prepaid, with return receipt requested. Notices delivered personally shall be deemed received as of actual receipt; mailed

notices shall be deemed received as of five days after the date postmarked. Mailed notices shall be addressed to the respective parties as follows:

To the District: Midpeninsula Regional Open Space District
Attention: President, Board of Directors
330 Distel Circle
Los Altos, CA 94022

To the Interim General Counsel: Susan Schectman, Interim General Counsel:
Susan M. Schectman
306 Shamrock Ranch Road
Pacifica, CA 94044

IN WITNESS WHEREOF, the parties hereto have executed this Employment Agreement effective this __ day of December 2011, at Los Altos, California.

MIDPENINSULA REGIONAL OPEN
SPACE DISTRICT:

INTERIM GENERAL COUNSEL:

By: _____
Larry Hassett, President
Board of Directors

Susan M. Schectman

Date: _____

Date: _____

ATTEST: _____
Michelle Radcliffe, District Clerk