



# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

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File #: 10-0986, Version: 1

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### TRANSMITTAL LETTER FOR BOARD MEETING OF SEPTEMBER 2, 2010

#### COMMITTEE ON PROCUREMENT

Mr. Richard Lanyon, Executive Director

Authority to increase purchase order and amend agreement for Dykema Gossett, PLLC to represent the District in the lawsuit of Metropolitan Water Reclamation District of Greater Chicago v. Terra Foundation et al., Case No. 06-CH-13817 involving the District's interest in the alley adjacent to its Main Office Building (100 East Erie Street) in an amount of \$200,000.00, from an amount of \$1,660,000.00, to an amount not to exceed \$1,860,000.00, Account 101-30000-601170, Purchase Order 3054932 (*Deferred from the August 12, 2010 Board Meeting*) (*As Revised*)

Dear Sir:

In September 2005, a direct voucher was issued to the law firm of Schwartz Cooper Greenberger & Krauss to commence legal work regarding the impact of proposed development of privately owned land on the District's alley located east and adjacent to its Main Office Building. Because the initial legal work exceeded \$10,000.00, on February 2, 2006, the Board of Commissioners authorized the Purchasing Agent to issue a purchase order to the law firm of Schwartz Cooper Greenberger & Krauss in an additional amount not to exceed \$10,000.00. In the summer of 2008, the law firm of Schwartz Cooper merged with and now operates under the name of Dykema Gossett, PLLC and, therefore, this and other purchase orders issued to Schwartz Cooper were assigned to the law firm of Dykema Gossett, PLLC so that the same attorneys could continue to represent the District in pending matters.

As of July 21, 2010, the attached list of change orders has been approved. The effect of these change orders resulted in an increase in an amount of \$1,650,000.00 from the original purchase order. The current contract value is \$1,660,000.00. The prior approved change orders reflect a 16,500% increase in the original contract value.

This matter which began as a discussion with the adjacent property owners concerning the parties' respective rights to use the District's alley has developed into contentious litigation. The District filed a declaratory action in the Circuit Court of Cook County and has defended against the defendant's motions for a preliminary injunction in full evidentiary hearings - Metropolitan Water Reclamation District of Greater Chicago v. Terra Foundation et al., Case Number 06 CH 13817. The initial ruling by the Court expanded the defendant's easement rights for two of the three buildings beyond what the District believes was contemplated by the original grant. But the Court upheld the District's position that the defendants had no easement rights with respect to the third building (664 North Michigan Avenue). The District appealed a portion of the preliminary injunction ruling to the Illinois Appellate Court, First Judicial District, Fourth Division - MWRD v. Terra Foundation et al., and 664 North Michigan Avenue, et al., v. MWRD - Docket Number 08-2223. The Appellate Court affirmed the ruling of the lower court. Additionally, the trial on the underlying complaint for declaratory relief has been completed. The defendants have also filed a counter-claim against the District alleging that it is entitled to damages due to the District's conduct with respect to the alley. The trial on the defendants' counter-claim has begun but currently is in recess until November 8, 2010.

Additional funds in the amount of \$200,000.00 are requested and required for the continued legal representation of the District related to the above-referenced matter, including trial of the defendants' damage claims.

This change order is in compliance with the Illinois Criminal Code since the change is germane to the contract.

It is hereby recommended that the Board of Commissioners authorize the Director of Procurement and Materials Management to execute a change order to increase the purchase order and amend agreement in an amount of \$200,000.00 (12% of current contract value), from an amount of \$1,660,000.00, to an amount not to exceed \$1,860,000.00.

Funds are available in Account 101-30000-601170.

Requested, Frederick M. Feldman, General Counsel, FMF:CL:rg

Recommended, Darlene A. LoCascio, Director of Procurement and Materials Management

Respectfully Submitted, Barbara J. McGowan, Chairman Committee on Procurement

Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for September 2, 2010

Attachments