Date: October 5, 2010

To: GCT Board of Directors

From: Ken Mills
Buyer/DBE Officer

RE: Consider Approval of a Modification to the Legal Services Contract to Increase the Contract Amount

I. EXECUTIVE SUMMARY

At its meeting in June 2008 the Board of Directors approved award of a contract to Nordman Cornmany Hair and Compton LLP (NCHC) for legal services to include a General Counsel who would report directly to the Board and a Legal Counsel who would report directly to the General Manager. The duties and anticipated hours required for these services were based on billings in the few prior years for the retiring General Counsel and other sources of legal services. Since it is very difficult to predict all the legal matters that might arise in the future, a time-and-material type of contract with an estimated not-to-exceed amount of $27,812.50 for the base three-year period was awarded effective July 1, 2008. If two three-year options are exercised, the Board approval contained a not-to-exceed amount of $100,589.98. If Federal Transit Administration (FTA) funds are used in a time-and-material contract, it must include a not-to-exceed amount. GCT has not paid for its legal services out of FTA funds, but the contract is written to anticipate that possibility. Through August 2010, payments of about $74,650 have been made to NCHC to address a number of specific legal matters in addition to providing general counsel services.

Although staff recognized the growing complexity of and increased hours for these professional services were costing more than anticipated in the contract, there were sufficient funds in prior year budgets to cover the additional expense. However, now that General Counsel will be leading the upcoming labor negotiations, staff realizes for budgetary purposes the contract amount should be increased to accommodate the expected additional expenses for that effort as well as general increased use of legal services available under the contract scope of work.

General Counsel's participation in labor negotiations may cost $30,000 or more since it is difficult to predict the length and complexity of each particular negotiation. To also allow for other legal services expenses at the currently forecasted rate, staff estimates the contract amount for the three-year base period should be $160,000. Staff is committed to managing the FY 2011 budget to accommodate that increase. GCT may re-solicit legal services at the end of the three-year base period.
It is recommended the Board of Directors authorize a contract modification to increase the contract amount for the three-year base period to $160,000 and should it appear it will exceed that amount to return to the Board for further authorization.

II. BACKGROUND

When Mr. Raymond Clayton, the prior General Counsel, anticipated retiring on June 30, 2008 and the then-current contract for a Labor Law Attorney was going to expire at the same time, GCT solicited for the services of General Counsel and Legal Counsel in one solicitation. A review of the hours billed by Mr. Clayton and Nordman Cormany Hair and Compton (NCHC), the firm then providing labor law services (and now providing legal services under the current contract), were analyzed and slightly increased to allow for some growth. The Request for Proposals (RFP) stated and the current contract states the expected range of hours as follows:

- General Counsel – 20 to 100 hours per year
- Legal Counsel – 15 to 100 hours per year

However, the actual contract amount was based on assumptions used in the price analysis of proposals received in response to the RFP. That analysis assumed hours for expected trips to GCT for Board and labor-related meetings plus additional hours not requiring trips to GCT. The total hours for each response included estimated travel time for trips to GCT. The analysis applicable to NCHC estimated a total of 99 hours for the three-year period. Considering both the stated range of hours above and experience to date under the contract, staff substantially underestimated what the hours and, hence, the original contract amount should be.

Since contract award, many important tasks, which were not envisioned in calculating the pre-contract estimates, have required a more active role by NCHC. Among those contributing to a total of 288 hours during the first two years of the contract are the following:

- Participate in GCT collective bargaining and strike preparation activities
- Respond to numerous ADA-related allegations.
- Review lease renewal for current radio antenna site
- Review lease negotiations for prospective additional radio antenna site
- Trademark new GCT logo
- Review agreements to sell or transfer surplus vehicles
- Oversee revision of a number of GCT real property grant deeds
- Investigate potential sites for new GCT facility
- Review updated advertising policy
- Review all liability case settlements
- Review proposed GCT policies and record retention issues
- Stay current on GCT labor law consults

Although contract cost was running ahead of expectations, it was recognized the legal services performed were necessary and staff was able to reallocate funds.
within the budget to pay the increased cost. While it was expected NCHC would be involved in the forthcoming labor negotiations, staff perceives the new leadership role may substantially increase hours of involvement. The contract rate for those hours is $50 per hour higher than the rate for General Counsel and most other services. In addition, experience now indicates the need for a more active role of Counsel in other issues will likely continue. These two factors should cause the current contract amount to be further increased beyond the actual total expected contract amount of $100,589.98 which includes the two option periods totaling six years. Although sufficient budgeted funds will be available and will continue to be allocated to pay for these services, it is important to bring the contract into reality by formally increasing the authorized amount for the base period.

Staff's analysis of the situation was presented to General Counsel, who concurred that the proposed increase in contract amount to $160,000 should be sufficient to cover anticipated costs for the remainder of the three-year contract period, barring any unforeseen events, and concurs that should this amount need to be increased it must be presented to the Board.

III. SUMMARY AND RECOMMENDATIONS

Staff recognized the contract with NCHC for legal services was incurring legitimate expenses over the current contract amount and, although budgeted funds were and will be available to cover higher than expected expenditures, the contract amount should be increased to $160,000 to match the currently anticipated total for the base period of the contract.

It is recommended the Board of Directors authorize a contract modification to increase the contract amount for the three-year base period to $160,000 and should it appear it will exceed that amount to return to the Board for further authorization.

[Signature]
General Manager
Concurrence