



OFFICE OF THE CITY ATTORNEY

**CARMEN A. TRUTANICH
CITY ATTORNEY**

**THOMAS A. RUSSELL
GENERAL COUNSEL**

**JOY M. CROSE
ASSISTANT GENERAL COUNSEL**

**CHRISTOPHER B. BOBO
ESTELLE M. BRAAF
JOHN T. DRISCOLL
TIMOTHY A. HOGAN
JUSTIN HOUTERMAN
SIMON M. KANN
PETER N. KING
JANET KARKANEN
KENNETH F. MATTFELD
HEATHER M. MCCLOSKEY
ESTHER S. OLSEN
STEVEN Y. OTERA**

DATE: APRIL 4, 2012

FROM: OFFICE OF THE CITY ATTORNEY

SUBJECT: RESOLUTION NO. _____ APPROVING THIRD AMENDMENT TO AGREEMENT NO. 2399 WITH DPRA, INC. FOR LITIGATION SUPPORT IN THE FIELD OF ENVIRONMENTAL FORENSICS

SUMMARY:

The City Attorney requests approval of a Third Amendment to Agreement 2399 with DPRA Incorporated, (DPRA) extending the term of the Agreement by eighteen months for a total term of eight and one-half years, with no additional appropriation. DPRA was retained to provide litigation support and expert witness testimony and this extension is made necessary by the fact that a trial date has still not been set in City v. Kinder Morgan Liquids Terminals LLC, a case that was filed in 2005 over remediation of the former marine terminal at Berths 171-173.

RECOMMENDATION:

It is respectfully recommended that the Board of Harbor Commissioners (Board):

1. Approve the Third Amendment to Agreement No. 2399 with DPRA in the form attached as Transmittal 1;
2. Authorize the Executive Director to execute and the Board Secretary to attest to the Third Amendment to Agreement No. 2399;
3. Authorize and direct the Board Secretary to forward the Third Amendment to Agreement No. 2399 to the City Council for its approval pursuant to Section 373 of the City Charter;
4. Adopt Resolution No. _____.

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INCORPORATED

DISCUSSION:

DPRA provides litigation support and expert testimony in the field of environmental forensics. Environmental forensics is the highly specialized discipline of indentifying the nature and source of water and soil contamination. Techniques include statistical sampling, chemical fingerprinting, fate and transport modeling, chemometrics and visualization for presentation to judges and juries. The specialized nature of these services distinguishes the work from that performed by City employees or other environmental consultants retained by the City.

Agreement No. 2399 was executed in 2005 with an original appropriation of \$675,000, and an original expiration date of April 25, 2008. DPRA was selected from a group of seven proposing firms based on their proximity, relevant experience, and narrow focus on litigation support. DPRA is a Kansas- based company but services the Agreement from their office and laboratory in Escondido, California.

The First Amendment to Agreement No. 2399 was approved by the Board on February 7, 2008, extending the term by two years to April 25, 2010, and with an additional appropriation of \$300,000. The Second Amendment was approved by the Board on Mary 25, 2010, extending the term by two years to April 25, 2012.

The Third Amendment is made necessary by continued delays in getting the case to trial. The case, filed in July 2005, is currently under a litigation stay pending resolution of Kinder Morgan and Texaco's dispute with the Regional Water Quality Control Board over soil and groundwater cleanup standards that will be applied at the site of their former marine oil terminal. Those standards are currently being appealed to the State Water Resources Control Board and could become the subject of a writ proceeding in the Superior Court. The writ proceeding could take one year or more to resolve.

Conclusion-The proposed Third Amendment to Agreement No. 2399 is required to continue litigation support for *City v. Kinder Morgan Liquids Terminals LLC, et al.*, LASC Case No. NC 041463. We recommend that the Board authorize the Third Amendment which would extend the term of the Agreement from April 25, 2012 to October 25, 2013.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a Third Amendment to Agreement 2399 with DPRA to extend the term of the Agreement by eighteen months. As an administrative activity, the Director of Environmental Management has determined the proposed action is exempt from the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2(f) of the Los Angeles City CEQA Guidelines.

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ECONOMIC BENEFITS:

This Board action will have no employment effect.

FINANCIAL IMPACT:

The Third Amendment to Agreement No. 2399 extends the term of the Agreement by eighteen months, but does not increase or modify the total compensation payable under Agreement No. 2399, which is \$ 975,000. A total of \$ 801,653 has been spent to date and the remaining appropriation (\$ 173,347) is believed adequate to cover trial prep and trial of the cost recovery case. The original Agreement was executed in 2005 without a Funding Out Clause. In addition to the term extension a Funding Out Clause has been included in the Third Amendment.

Funding for Agreement No. 2399 has been proposed to be budgeted, upon Board approval as part of the annual budget adoption process in the amount of \$ 50,000.00 in the FY 2012-2013 Budget, within the Harbor Department City Attorney's Office Account No. 54410, Division No. 0120 and Program No. 000.

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CITY ATTORNEY:

The Office of the City Attorney has prepared the Third Amendment to Agreement No. 2399 and approved it as to form and legality.

TRANSMITTAL:

1. Proposed Third Amendment to Agreement No. 2399


FIS Approval: efj (initials)

CA Approval: TM (initials)



KENNETH F. MATTFELD
Deputy City Attorney

APPROVED:

By 
THOMAS A. RUSSELL,
General Counsel, Harbor Department