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DATE: January 18, 2022

FROM: OFFICE OF THE CITY ATTORNEY

SUBJECT: RESOLUTION NO. _____ SECOND AMENDMENT TO
AGREEMENT NO. E-7079 BETWEEN THE CITY OF LOS ANGELES
HARBOR DEPARTMENT AND CHRISTIAN M. CARRIGAN

SUMMARY:

The Office of the City Attorney (City Attorney) requests approval of a Second Amendment to Agreement No. E-7079 between the City of Los Angeles Harbor Department (Harbor Department) and Christian M. Carrigan. The proposed Amendment will extend the term of the Agreement by one year and increase the Agreement authority by \$150,000.

The current two-year Agreement expires on May 26, 2022. The proposed Amendment will extend the Agreement by one year to an expiration date of May 26, 2023 and will allow Christian M. Carrigan to continue to assist the City Attorney as an expert witness in the matters of *City of Los Angeles v. L.A. Terminals, Inc., et al.* (Superior Court Case No. NC061591) (State Action), and *L.A. Terminals, Inc. v. City of Los Angeles, et al.* (District Court Case No 2:18-cv-06754-MWF-RAO) (Federal Action). In addition to extending the term, the proposed Amendment will also increase Agreement authority by \$150,000 from \$35,000 currently to \$185,000 as proposed.

The increase in authority is necessary in order to compensate Christian M. Carrigan for additional expert services, which were not budgeted in the original Agreement and First Amendment. The Harbor Department will continue to be financially responsible for payment of professional fees rendered under the proposed Second Amendment.

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SUBJECT: SECOND AMENDMENT TO AGREEMENT NO. E-7079 WITH CHRISTIAN M. CARRIGAN

RECOMMENDATION:

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

1. Find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II, Section 2(f), of the Los Angeles City CEQA Guidelines;
2. Approve the Second Amendment to Agreement No. E-7079 with Christian M. Carrigan, extending the term of the Agreement by one year, for a total term of three years (May 27, 2020 to May 26, 2023);
3. Approve the Second Amendment to Agreement No. E-7079 with Christian M. Carrigan, increasing the authority by \$150,000, for a total authority of \$185,000;
4. Authorize the Executive Director to execute and the Board Secretary to attest to the Second Amendment to Agreement No. E-7079; and
5. Adopt Resolution No. _____.

DISCUSSION:

Mr. Carrigan was retained in the spring of 2020 under a one-year Executive Director Agreement to serve as an expert witness in *City v Underwriters at Lloyds, London, et al.* He is an attorney and was once the head of the Enforcement Branch of the State Water Resources Water Control Board. He was well qualified to testify on the regulatory administrative processes that drive investigation and cleanup of contaminated Port properties. His familiarity with the policies and processes of the Regional Water Quality Control Boards allowed him to diagnose and interpret the administrative record associated with our regulated properties for the Court. Although three of the sites at issue in that case settled just before trial (San Pedro Boat Works, Front Street, and TraPac), trial proceeded on the Wilmington Marine Services property to decide whether directives issued by the USEPA constituted a third party claim for property damage that could be covered by insurance or whether, as the insurers argued, costs incurred by the Port were simply statutory obligations incidental to property redevelopment. With the help of Mr. Carrigan's testimony, the City won the issue handily in a final ruling issued this past October.

Due to a delay in the commencement of trial, Mr. Carrigan's agreement was amended on April 27, 2021 pursuant to Board Resolution 21-9786, extending its term to May 26, 2022 and increasing maximum compensation from \$22,000 to \$35,000.

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SUBJECT: SECOND AMENDMENT TO AGREEMENT NO. E-7079 WITH CHRISTIAN M. CARRIGAN

For the reasons discussed in our Closed Session Briefing, the Office of the City Attorney finds that Mr. Carrigan's experience and expertise would be of value in assisting the Office in resolving the companion Federal and State Actions and in resolving the Harbor Department's liabilities under a yet-to-be-issued Cleanup and Abatement Order from the Los Angeles Regional Water Quality Control Board. Only \$5,025.00 in authority remains in his contract. In anticipation of the volume of documentation he will be asked to review, extended mediation(s), the possible need for Mr. Carrigan to occasionally travel from his Sacramento area home, and the possibility that Mr. Carrigan may be asked to testify at deposition and at one or both trials, an increase in the contract appropriation of \$150,000 is recommended. Whereas the Federal case is set for trial in March 2023 and no date has been set for trial in the State case, and whereas the Cleanup and Abatement Order has already languished in draft form for over one year, another one year extension of Mr. Carrigan's contract is recommended.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of a Second Amendment to Agreement No. E-7079 with Christian M. Carrigan for expert services and expert witness testimony, which is an administrative activity. Therefore, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

Approval of the proposed Second Amendment would increase the compensation under Agreement No. E-7079 by \$150,000 from \$35,000 currently to \$185,000 as proposed. Fiscal Year 2021-22 funding in the amount of \$80,025 is available within Account No. 54410 (Legal Fees and Services), Division 0120, Program 000. Funding for future years, if necessary, will be requested as part of the annual budget adoption process. A funding out clause is included in Agreement No. E-7079.

The schedule of compensation, broken down by fiscal year is as follows:

FY 2020-21	\$29,975
FY 2021-22	\$80,025
FY 2022-23	\$75,000
Total	\$185,000

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SUBJECT: SECOND AMENDMENT TO AGREEMENT NO. E-7079 WITH
CHRISTIAN M. CARRIGAN

CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved the proposed Second Amendment as to form and legality.

TRANSMITTALS:

1. Agreement No. E-7079 with Christian M. Carrigan
2. First Amendment to Agreement No. E-7079
3. Second Amendment to Agreement No. E-7079

FIS Approval: MB

CA Approval: SO

Steven Otera

BRIAN DALUIO
Deputy City Attorney

APPROVED:

Steven Otera

JANNA B. SIDLEY
General Counsel

Marla Bleavins

EUGENE D. SEROKA
Executive Director