

HARBOR DIVISION

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DATE: AUGUST 4, 2020

FROM: OFFICE OF THE CITY ATTORNEY

SUBJECT: RESOLUTION NO. \_\_\_\_\_ THIRD AMENDMENT TO  
AGREEMENT NO. 13-3109 BETWEEN THE CITY OF LOS ANGELES  
HARBOR DEPARTMENT AND BROWN & WINTERS

**SUMMARY:**

The Office of the City Attorney (City Attorney) requests approval of a Third Amendment to Agreement No. 13-3109 between the City of Los Angeles Harbor Department (Harbor Department) and the law firm of Brown & Winters. The proposed Third Amendment will extend the term of the Agreement by eighteen months and increase the Agreement authority by \$95,000. The current seven-year and six month Agreement expires on August 31, 2020. The proposed Amendment would extend the term of the Agreement by 18 months to a proposed nine years and expiration date of February 28, 2022. The extension will allow Brown & Winters to continue to assist the City Attorney with efforts to recover environmental investigation and cleanup expenses from both the City's and certain tenant's historic insurance policies. The Third Amendment increases the authority and while it does not alter the contingent fee payment schedule, the payment schedule is clarified to state that Brown & Winters' fees must be paid from recoveries made during the contract period. Ancillary litigation costs and expenses will continue to be the financial responsibility of the Harbor Department.

**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;

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2. Approve the Third Amendment to Agreement No. 13-3109 with Brown & Winters, extending the term of the Agreement by eighteen months, for a total term of nine years (March 1, 2013 to February 28, 2022);
3. Approve the Third Amendment to Agreement No. 13-3109 with Brown & Winters, increasing the authority by \$95,000, for a total authority of \$200,000;
4. Authorize and Direct the Board Secretary to forward the Third Amendment to the Los Angeles City Council for its approval pursuant to Section 373 of the Los Angeles City Charter and Section 10.5 of the Los Angeles City Administrative Code;
5. Authorize the Executive Director to execute and the Board Secretary to attest to the Third Amendment to Agreement No.13-3109; and
6. Adopt Resolution No.\_\_\_\_\_.

**DISCUSSION:**

In 2013, the City Attorney requested proposals for legal services to perform insurance archeology and to subsequently pursue historic insurance policies for reimbursement of the cost of investigating, monitoring and remediating legacy contamination of Harbor Department properties. Brown & Winters was retained under Agreement No. 13-3109 (Transmittal 1) based on their success in similar endeavors for the Port of San Diego and their willingness to undertake the task on a contingent fee basis.

The Board approved the First Amendment to the Agreement on February 4, 2016 (Transmittal 2), extending the term of the Agreement by three years, to February 28, 2019. City Council approved the extension on May 3, 2016.

The Board approved the Second Amendment to the Agreement on February 21, 2019 (Transmittal 3), extending the term of the Agreement by eighteen months, to August 31, 2020. City Council approved the extension on April 10, 2019.

Brown & Winters was successful in reconstructing a portfolio of City insurance policies dating back to the mid 1950's. These efforts have assisted the City Attorney in recovering remediation costs from insurers in *City v. San Pedro Boatworks*, *City v BAE Systems et al.*, the liquidation of Orion Insurance Co. and London and Overseas Insurance Co., and *City v. Colonial Yacht Anchorage*. Brown & Winters is continuing to assist with ongoing litigation in *City v. Wilmington Marine Services* and *City v. Underwriters at Lloyds et al.* The latter case, filed in 2015 and set for trial in 2021, seeks recovery of the cost of responding to administrative orders (as opposed to lawsuits) issued by environmental regulatory agencies at several different sites. Brown & Winter's efforts to date have

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generated over \$14 million in insurance settlements and, perhaps more importantly, the historic insurance portfolio has funded the legal defense against suits and/or counter-suits in *Wehr v City*, *City v BAE Systems et al.* and *City v. L.A. Terminals et al.* Extending Agreement 13-3109 will allow Brown & Winters to continue to assist with the aforementioned litigation. A total of \$16,410 has been budgeted in Fiscal Year (FY) FY 2020-21 for ancillary litigation services in connection with the aforementioned litigation.

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is the approval of a Third Amendment to Agreement No. 13-3109 with Brown & Winters for insurance recovery legal services and related litigation, 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 under Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

**FINANCIAL IMPACT:**

Approval of the Third Amendment would increase the compensation under Agreement No. 13-3109 by \$95,000. The compensation will increase to a total amount not to exceed \$200,000. Funding for the current Fiscal Year (FY 2020-21) in the amount of \$30,000 is available within Account No. 54410 (Legal Fees and Services), Division 0120, Program No. 000 for payment of ancillary litigation services incurred in the current Fiscal Year. 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. 13-3109.

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

FY 2013-14	\$ 4,750.00
FY 2017-18	\$19,127.00
FY 2018-19	\$26,533.00
FY 2019-20	\$38,181.00
FY 2020-21	\$30,000.00
FY 2021-22	<u>\$81,409.00</u>
<b>TOTAL</b>	<b>\$200,000.00</b>

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CITY ATTORNEY:


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

TRANSMITTALS:


1. Agreement No. 13-3109 with Brown & Winters
2. First Amendment to Agreement No. 13-3109
3. Second Amendment to Agreement No. 13-3109
4. Proposed Third Amendment to Agreement No. 13-3109

FIS Approval: MB

CA Approval: JS

  
KENNETH MATTFELD  
Deputy City Attorney

APPROVED:

  
JANNA B. SIDLEY  
General Counsel

  
EUGENE D. SEROKA  
Executive Director