

HARBOR DIVISION

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DATE: FEBRUARY 12, 2019

FROM: OFFICE OF THE CITY ATTORNEY

SUBJECT: RESOLUTION NO. _____ SECOND 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 the Board of Harbor Commissioners' (Board) approval of a Second 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 Second Amendment will extend the term of the Agreement by eighteen months. The current six-year Agreement expires on February 28, 2019. 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 Second Amendment does not alter the compensation amount or the contingent fee payment schedule but does make it clear 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:

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1. Find 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 as determined by the Director of Environmental Management;
2. Approve the Second Amendment to Agreement No. 13-3109 with Brown & Winters, extending the term of the Agreement by eighteen months, for a total term of seven years and six months (March 1, 2013 to August 31, 2020);
3. Authorize and Direct the Board Secretary to forward the Second 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;
4. Authorize the Executive Director to execute and the Board Secretary to attest to the Second Amendment to Agreement No.13-3109; and
5. 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.

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 work two pending matters, *City v. Wilmington Marine* and *City v. Underwriters at Lloyds et al.* The latter case seeks recovery of the cost of responding to administrative orders (as opposed to lawsuits) issued by environmental regulatory agencies at several different sites. Extending Agreement 13-3109 will allow Brown & Winters to continue to assist with the aforementioned litigation. A total of \$30,000 has been budgeted in Fiscal

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Year (FY) FY2019 for ancillary litigation services in connection with the aforementioned litigation.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of a Second 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 Second Amendment would not increase compensation under Agreement No. 13-3109. The compensation will remain a total amount not to exceed \$105,000. FY 2018-19 funding of \$26,532.50 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. The total remaining contract authority is \$50,343, which is expected to be sufficient to cover expenses for the period of March 1, 2019 to August 31, 2020.

Funding in the amount of \$30,000 was included in the FY 2019-2020 proposed Budget, and pending Board approval, these funds will be available within the Harbor Department City Attorney's Office Account No. 54410, Division 120 and Program No. 000.

A funding out clause is included in Agreement No. 13-3109. This clause stipulates that if, in any subsequent fiscal year, funds are not appropriated by the City for the work required by the agreement, then the agreement shall be terminated. However, the termination would not relieve the parties of liability for any obligation previously incurred.

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

FY 2013-14	\$ 4,750.00
FY 2014-15	\$ 0.00
FY 2015-16	\$ 4,247.00
FY 2016-17	\$ 0.00
FY 2017-18	\$19,127.50
FY 2018-19	\$26,532.50
FY 2019-20	\$30,000.00
FY 2020-21	\$20,343.00
TOTAL	\$105,000.00

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BROWN & WINTERS

CITY ATTORNEY:

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

TRANSMITTALS:

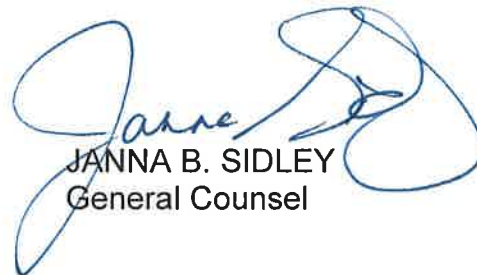
1. Agreement No. 13-3109 with Brown & Winters
2. First Amendment to Agreement No. 13-3109
3. Proposed Second Amendment to Agreement No. 13-3109

FIS Approval: 

CA Approval: 




KENNETH MATTFELD
Deputy City Attorney



JANNA B. SIDLEY
General Counsel

APPROVED:

By 
EUGENE D. SEROKA
Executive Director