

HARBOR DIVISION

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DATE: JULY 25, 2022

FROM: OFFICE OF THE CITY ATTORNEY

**SUBJECT: RESOLUTION NO. _____ - FOURTH AMENDMENT TO
NOSSAMAN LLP LEGAL SERVICES AGREEMENT NO. 19-3668**

SUMMARY:

The Office of the City Attorney (Office) requests approval for a Fourth Amendment (Amendment) to Agreement No. 19-3668 with Nossaman LLP (Nossaman). The proposed Fourth Amendment increases the compensation by \$500,000 with no change in term. The additional compensation is necessary to support ongoing litigation support for the case entitled *Harbor Performance Enhancement Center, LLC v. City of Los Angeles Harbor Department, et al* (state court action identified as Superior Court Case No. 21STCV15500) as well as new legal services required for the China Shipping Permit No. 999. The additional compensation will increase the existing compensation from \$1,773,650 to a total of \$2,273,650. The Harbor Department will be financially responsible for payment of expenses under the proposed Fourth Amendment.

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. Find in accordance to Charter Section 1022 that the scope of work of the proposed Agreement can be more economically and feasibly provided by an independent contractor than by City employees;
3. Approve the Fourth Amendment to Legal Services Agreement No. 19-3668 with Nossaman LLP, to increase the compensation by \$500,000 from \$1,773,650 to \$2,273,650 with no change in term;
4. Authorize the Executive Director and Board Secretary to execute and attest to the Fourth Amendment; and
5. Adopt Resolution No. _____.

DISCUSSION:

Background – Following a competitive Request for Proposals process, Nossaman was awarded a three-year agreement, Agreement No. 19-3668 (Transmittal 1), to provide legal services for eminent domain, inverse condemnation and real estate matters. Prior to being awarded Agreement No. 19-3668, Nossaman had previously represented the Harbor Department in the Ports O' Call Bankruptcy matter and had provided general legal advice and litigation support in various aspects relating to real property law.

Existing Contract – Agreement No. 19-3668 commenced on July 20, 2019 for a three-year term with a maximum compensation not to exceed \$200,000. Since being awarded this Agreement, Nossaman has actively assisted the Harbor Department in legal services related to the Harbor Performance Enhancement Center (HPEC) litigation.

First Amendment – The Board approved the First Amendment to the Agreement on February 20, 2020 (Transmittal 2), increasing the authority of the Agreement from \$200,000 to a maximum total compensation of \$1,773,650.

Second Amendment – The Board approved the Second Amendment to the Agreement on November 19, 2020 (Transmittal 3), correcting the insurance provisions for the Agreement to include standard provisions for Commercial General Liability.

Third Amendment – The Board approved the Third Amendment to the Agreement on September 2, 2021 (Transmittal 4) extending the three-year term to a five-year term. The additional term was necessary due to ongoing litigation support related to an appeal of the federal case identified as United States District Court Case No. 2:20-cv-03251-PSG-MAA entitled *Harbor Performance Enhancement Center, LLC v. City of Los Angeles Harbor Department, et al.* and a new state court action identified as Superior Court Case

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No. 21STCV15500 entitled *Harbor Performance Enhancement Center, LLC v. City of Los Angeles Harbor Department*.

Fourth Amendment – To date (through May 31, 2021), \$1,249,746 in spending has been incurred under the Agreement and the balance of \$523,904 will be spent by December 31, 2022. The current distribution of expenses is \$32,686 for legal services for general real estate matters and \$1,217,060 for ongoing litigation support for HPEC matters. Additional compensation of \$500,000 is now necessary for litigation support for a new action the Harbor Department may commence for real estate matters.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of a Fourth Amendment to Agreement No. 19-3668 to increase the compensation authority for ongoing legal services for litigation and real estate matters, 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:

The proposed action is approval of a Fourth Amendment to Agreement No. 19-3668 to increase the compensation authority by \$500,000 from \$1,773,650 currently to \$2,273,650 under the proposed Amendment. To date, \$1,249,746 in spending has been incurred under the Agreement and a balance of \$523,904 will be spent by December 31, 2022.

Funding for ongoing litigation support for HPEC matters and other real estate matters in the amount of \$712,509 is available in FY 2022/23, Operating Budget within the Harbor Department City Attorney's Office Account No. 54410 (Legal Fees & Services), Division No. 120 and Program No. 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 the Agreement. Spending under Agreement No. 19-3668 has occurred and is anticipated to occur as follows:

FY 19-20	\$347,385
FY 20-21	\$103,626
FY 21-22	\$874,872
FY 22-23	\$712,509
<u>FY 23-24</u>	<u>\$235,258</u>
	\$2,273,650

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CITY ATTORNEY:

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

TRANSMITTALS:

1. Agreement No. 19-3668 with Nossaman LLP
2. First Amendment to Agreement No. 19-3668
3. Second Amendment to Agreement No. 19-3668
4. Third Amendment to Agreement No. 19-3668
5. Fourth Amendment to Agreement No. 19-3668

FIS Approval: MB

CA Approval: SO




JANET KARKANEN
Deputy City Attorney

APPROVED:

By 

STEVEN OTERA
General Counsel, Harbor Department

APPROVED:

By 

EUGENE D. SEROKA
Executive Director