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DATE: OCTOBER 6, 2021

FROM: OFFICE OF THE CITY ATTORNEY

**SUBJECT: RESOLUTION NO. _____ - PROFESSIONAL SERVICES
AGREEMENT BETWEEN THE CITY OF LOS ANGELES HARBOR
DEPARTMENT AND WEST PUBLISHING CORPORATION.**

SUMMARY:

The Office of the City Attorney (Office) requests that the Board of Harbor Commissioners (Board) approve a professional services agreement (Agreement) between the City of Los Angeles Harbor Department (Harbor Department) and West Publishing Corporation (Westlaw) for computer assisted legal research services. The Agreement is for a term of three (3) years for an amount not to exceed \$138,282. The Harbor Department is financially responsible for payment for legal research services rendered under the proposed Agreement.

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 a Professional Services Agreement with West Publishing Corporation for a total Agreement term not to exceed three (3) years and a maximum amount not to exceed \$138,282;

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3. Authorize the Executive Director and Board Secretary to execute and attest to the Agreement; and
4. Adopt Resolution No. _____.

DISCUSSION:

Background – The Office has determined that it requires subscription services for computer assisted legal research. Since 2000 through the present, the Office has had a professional services agreement for legal research with either LexisNexis or Westlaw. The most recent Agreement was with Westlaw, had a term of three years and expired on September 25, 2021.

Need For Legal Research Services And Scope Of Work - In representing the Harbor Department in litigation and administrative proceedings and providing legal advice in transactions, compliance and other legal matters, the Office of the City Attorney must perform legal research to support its analysis and recommendations. Such legal research requires access to myriad sources, including caselaw, statutes, regulatory decisions, law review articles, treatises, practice guides and other materials, both within and outside California and at the federal level. These needs for many years were satisfied by a physical library consisting of books and other written materials. With the advancement of technology, however, much if not most of this information now is available online. The services sought by this request are critical to the Office of the City Attorney in order to access the most accurate and recent legal authorities for use in analyzing the issues that arise at the Harbor Department, providing legal advice to staff, management and the Board, and handling litigation and other legal proceedings.

Selection Process – There are primarily two on-line legal research platforms used by attorneys nationwide, Westlaw and LexisNexis. They have different scopes of coverage, functionality and features. The City Attorney's Office received and reviewed proposals from both Westlaw and LexisNexis and determined Westlaw was far superior in content, features, and service than LexisNexis. The higher cost for Westlaw - \$3808/month versus \$1200/month – includes a larger universe of content as well as features and services exclusive to Westlaw that best suits the needs of the City Attorneys serving the Harbor Department. The Westlaw subscription includes usage for 15 attorneys plus up to 15 additional staff, 24/7 full-service support, and training.

In 2018, the Office switched from LexisNexis to Westlaw and the attorneys have been very satisfied with Westlaw's scope and functionality. Westlaw's newest offering, *Westlaw Edge*, provides the next generation of legal searches, advanced citatory service, an easy way to see statutory changes, and integrated litigation analytics, all powered by artificial intelligence. In addition, as part of the renewal with Westlaw, the Department will gain a

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new upgrade to *Practical Law*, a section of Westlaw with a high value library of ready-to-use work product for advisory, transactional, and litigation matters. *Practical Law* rolled out a set of Artificial Intelligence powered features called *Practical Law Dynamic* to assist attorneys better understand and complete their work.

Due to the content advantage, functionality, and the unique features and services offered by Westlaw, it is the opinion of the City Attorneys serving the Harbor Department that Westlaw is best suited to their professional and technical needs.

Proposed Agreement Terms - The Agreement terms are as follows:

Term: From November 1, 2021 for a total Agreement term not to exceed three (3) years

Contract Authority: Maximum amount not to exceed \$138,282

Scope of Work: Computer assisted legal research services for Harbor Department

Standard City Agreement Provisions with Modifications: Five sections of the Standard City Agreement were modified.

- Section 3(B)(2): Right to terminate the agreement on ten days' notice was modified. Absent a statutory requirement Westlaw could not agree to terminate for convenience. Westlaw bases its pricing on a multi-year agreement, and a termination for convenience essentially makes the agreement a month-to-month agreement. Westlaw allows customers to terminate for material breach. Section 3(B)(2) was modified to allow termination for material breach.
- Section 6: The audit provision was modified to accommodate West's concerns about this provision potentially being interpreted to allow the City access to West's intellectual property, including the software coding effectively comprising its product, and similar intellectual property of its vendors. The City has no interest in obtaining access to West intellectual property, and such intellectual property is not necessary for the City to achieve the objectives of this provision and therefore, the net effect of the modification is de minimis. The revisions made do not alter in any fashion the City's right to inspect records for purposes of auditing for compliance under this contract.
- Section 9: Indemnification for ordinary negligence, errors or omissions. In order to provide competitive pricing, Westlaw usually limits its assumption of risk to gross negligence or willful misconduct. However, in this case, Westlaw will agree to indemnify for ordinary or regular negligence, but could not agree to indemnify for errors and omissions. Section IX was modified to insert the words "ordinary, regular or grossly negligent acts" but deleted "errors" and "omissions." In view of the fact that this is an online subscription service, in which access to a computer

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database is being provided, with very minimal to no physical presence of West personnel on City premises, this revision is viewed as acceptable.

- Section 11: Termination provision was modified to include a 30-day right to cure before termination.
- Section 19: The Proprietary Information section was deleted as no proprietary information will be provided to Westlaw nor will any patentable work product be produced under this Agreement.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of a professional services agreement with West Publishing Corporation for computer assisted legal research services, 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 for the approval of an Agreement for legal research services for a total term not to exceed three (3) years. The proposed maximum compensation authority is \$138,282. The Harbor Department is financially responsible for payment for services rendered under the proposed Agreement. Funding in the amount of \$30,424 was included in the Fiscal Year 2021-22 Adopted Budget, and these funds are available within the Harbor Department City Attorney’s Office Account No. 54110 (Computer Software Maintenance Services), Division No. 120 and Program No. 000. Funding for future fiscal years if necessary, will be requested to be budgeted as part of the annual budget adoption process, upon Board approval. A funding out clause is included in the Agreement.

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

FY 2021-22 November 1, 2021 - June 30, 2022	\$30,424
FY 2022-23 July 1, 2022 - June 30, 2023	\$45,940
FY 2023-24 July 1, 2023 - June 30, 2024	\$46,400
FY 2024-25 July1, 2024 - October 31, 2024	\$15,518
Total	\$138,282

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CITY ATTORNEY:

The Office of the City Attorney has prepared and approved the proposed Agreement as to form and legality.

TRANSMITTALS:

1. Professional Services Agreement with West Publishing Corporation

FIS Approval: MB

CA Approval: SO

Steven Otera
MINAH PARK
Deputy City Attorney

APPROVED:

By *Steven Otera*
JANNA B. SIDLEY
General Counsel, Harbor Department

APPROVED:

By *Mark Blewett*
EUGENE D. SEROKA
Executive Director

Author: M.Park
Board Meeting: October 21, 2021