

HARBOR DIVISION

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DATE: OCTOBER 10, 2024

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 approval of 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 \$179,672.40. The Harbor Department is financially responsible for payment of costs 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. Find that, in accordance with Charter Section 1022 the scope of work for the proposed Agreement can be more economically or feasibly provided by an independent contractor than by City employees;
3. 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 \$179,672.40;

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

DISCUSSION:

Background – The Office has determined that it needs to continue subscription services for computer-assisted legal research without interruption. Since 2000, the Office has had a professional services agreement for legal research with either LexisNexis or Westlaw. The attorneys have used Westlaw for the past six years, consistently achieving effective results and no complaints. The most recent agreement had a term of three years and will expire on October 31, 2024.

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 must perform legal research to support its analysis and recommendations. Such legal research requires access to various 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. The services sought by this request are critical to the Office 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 – The Office is utilizing Master Service Agreement (MSA) No. 5-23-70-40-02 (Transmittals 2 and 3) negotiated by the State of California, Department of General Services that allows government entities to take advantage of its competitive bid process and negotiated prices, as specifically allowed under Los Angeles Administrative Code Section 10.15(a)(8) Competitive Bids.

The Office opted to upgrade to Westlaw Proflex which includes improved searching technology and advanced organizational tools such as Precision Preferred with Artificial Intelligence (AI) Assisted Research, All Analytical, and Litigation Collection, all of which can significantly cut research time.

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Proposed Agreement Terms - The Agreement terms are as follows:

Term: Total term not to exceed three (3) years.

Contract Authority: Maximum amount not to exceed \$179,672.40.

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

Standard City Agreement Provisions with Modifications: The same five sections of the Standard City Agreement modified in the current agreement were modified here.

- 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 Westlaw's concerns about this provision potentially allowing the City access to Westlaw'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 Westlaw's 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 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 database is being provided, with very minimal to no physical presence of Westlaw personnel on any City premises, this revision is viewed as acceptable.
- Section 11: Termination provision was modified to include a 30-day right to cure before termination.
- The Proprietary Information section was deleted in its entirety as no proprietary information will be provided to Westlaw nor will any patentable work product be produced under this Agreement.

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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 the approval of an Agreement for professional services with Westlaw for computer-assisted legal research services for a three-year term and total maximum compensation of \$179,672.40. If approved, spending under the proposed Agreement is anticipated to occur as follows:

<u>Fiscal Year</u>	<u>\$ Amount</u>
2024-25	\$39,139.20
2025-26	\$59,491.58
2026-27	\$60,681.42
2027-28	\$20,360.20
<u>Total</u>	<u>\$179,672.40</u>

Fiscal Year 2024-25 funding in the amount of \$39,139.20 has been budgeted within the Harbor Department's Operating Budget, Account 542000 (Software Subscriptions), Center 10300 (Office of the City Attorney), Program 000. Funding for future years, if necessary, will be requested as part of the annual budget adoption process, subject to Board approval. A funding out clause is included in the Agreement.

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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
2. State of California, Department of General Services, Master Service Agreement (MSA) No. 5-23-70-40-02
3. State of California, Department of General Services, Master Service Agreement (MSA) No. 5-23-70-40-02 Attachments I-VI

FIS Approval: JS

CA Approval: MC

Jay M. Coore for

MINAH PARK
Deputy City Attorney

APPROVED:

By *Jay M. Coore for*
STEVEN Y. OTERA
General Counsel, Harbor Department

APPROVED:

By *Erica M. Calhoun* for
EUGENE D. SEROKA
Executive Director