

HARBOR DIVISION

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**MINAH PARK**  
**HELEN J. SOK**

**DATE: APRIL 5, 2022**

**FROM: OFFICE OF THE CITY ATTORNEY**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - LEGAL SERVICES AGREEMENT  
BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND  
HUNTON ANDREWS KURTH LLP FOR INSURANCE COVERAGE  
MATTERS**

**SUMMARY:**

The Office of the City Attorney (Office) requests the Board of Harbor Commissioners (Board) approve the Legal Services Agreement between the City of Los Angeles Harbor Department and Hunton Andrews Kurth LLP (Hunton) for legal services related to insurance coverage matters. The proposed term of the Agreement is three years. The proposed compensation authority for the Agreement is \$500,000. The Harbor Department is financially responsible for payment for legal services rendered under the proposed Agreement. The Agreement also allows for the award of additional success fees from insurance recoveries.

In connection with the proposed Agreement, Hunton has requested a waiver of any potential conflicts that might arise by way of its representation of Chevron in proceedings before the Regional Water Quality Control Board pertaining to Berths 78 and 100, or by way of its representation of Ultramar, Valero Energy, NuStar Energy and/or Shore Terminals in connection permitting and environmental approvals for their MOTEMS wharf upgrades.

**RECOMMENDATION:**

It is recommended that the Board of Harbor Commissioners:

1. Find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California

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Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines;

2. Formally waive any potential conflict that might arise from Hunton Andrews Kurth's representation of Chevron and formally waive any potential conflict that might arise from Hunton Andrews Kurth's representation of Ultramar, Valero Energy, NuStar Energy and/or Shore Terminals;
3. Authorize the Office of the City Attorney to execute a written conflict waiver;
4. Find in accordance with 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;
5. Approve a Legal Services Agreement with Hunton Andrews Kurth LLP in the amount of \$500,000 for a three-year term;
6. Authorize the Executive Director and Board Secretary to execute and attest to the Agreement; and
7. Adopt Resolution No. \_\_\_\_\_.

**DISCUSSION:**

Background – In accordance with Charter Section 275, the Office has determined that it requires outside legal counsel to assist in the discharge of its duties to perform legal services in connection with litigating and resolving complex insurance coverage disputes and in particular, coverage of environmental investigation and remediation expenses. The Office's prior nine-year agreement with Brown & Winters for such services expired on February 28, 2022.

Need for Services and Scope of Work – Hunton will assist the Harbor Division of the City Attorney's Office with insurance coverage disputes. Such disputes occasionally arise under the Harbor Department's current insurance policies, which include general liability, excess liability, employment practices liability, law enforcement liability, and all-risk property insurance, or from the City's status as additional insured on its tenant's liability policies (additional insured status is required under all of the Department permits or

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leases). Ongoing litigation seeks to recover environmental investigation and remediation expenses from Harbor Department policies dating back to the late 1950s.

Counsel will immediately step into and assist with:

1. ***City of Los Angeles v. Underwriters at Lloyds, et al.***, LA Superior BC588876. This case was filed in 2015 to address remediation expenses at the Southwest Marine Shipyard, San Pedro Boat Works, TraPac Terminal, and the Front Street Pipeline Corridor. After several important rulings and numerous settlements, the case is now focused solely on the Wilmington Marine Services site.<sup>1</sup>
2. ***City of Los Angeles v Travelers Indemnity Company, Travelers Casualty and Surety Company and United National Insurance Company***, U.S.D.C. 22-cv-00130-GW. This case was filed to collect a judgment against Wilmington Marine Services from policies issued to Wilmington Marine.
3. ***City of Los Angeles v. Underwriters at Lloyds, et al.***, LA Superior 22STCV08705. A derivative of the aforementioned case by the same name that the Court deemed worthy of a separate filing, this case seeks indemnity for remediation costs associated with the 2006 settlement of ***Santa Monica BayKeeper, et al. v. Kaiser Int'l, et al.***, U.S.D.C. Case 97-cv-07761-DDP.

Competitive Counsel Selection Process – The Harbor Department issued a request for proposals (RFP) on May 3, 2021. That request sought alternative or contingent fee proposals premised on the Harbor Department’s ongoing insurance recovery effort in *City of Los Angeles v. Underwriters at Lloyds, et al.*, Los Angeles Superior Court Case BC588876. Based on the responses received, settlements made in June 2021, rulings obtained following the June 9, 2021 phase two trial, and the overall maturity of the case, the Office of the City Attorney now believes that a contract premised primarily on hourly rates would be more appropriate. No contracts were awarded based on the initial RFP.

On December 7, 2021, the Office re-published an RFP. Based on a review of the eight written proposals submitted and two firms interviewed, the Office of the City Attorney determined that Hunton was by far the most knowledgeable and experienced firm in the

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<sup>1</sup> To date, \$23.8 million has been recovered from City and tenant insurance policies. In addition, City policies discovered through the archeology effort provide a defense against lawsuits. Having the insurance pay lawyers to defend the typical counterclaims received when the City files an environmental action (e.g., *City v. SouthWest Marine*, *City v. Colonial Yacht Anchorage*, *City v. LA Terminals*) is invaluable.

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field of complex insurance coverage disputes, particularly with respect to environmental coverage.

Hunton proposed a deep discount to its normal hourly rate in exchange for the potential award of success or bonus fees to be paid out of insurance recoveries. Unlike a typical contingent fee, the proposed success fees are subject to a dollar cap.

Compensation is described in Exhibit B of the proposed Agreement. The Office of the City Attorney believes that the proposed compensation scheme will work to the Harbor Department's advantage. It allows the Department to retain a high caliber firm at affordable rates and is expected to provide a better yield on insurance recoveries than the contingent fee scheme in the Department's prior contract. As noted above, a contingent fee is not appropriate considering the maturity of the environmental cost recovery effort. The archeology to discover the old policies is complete. Over the course of five years, the court has made important rulings interpreting both the policies and the administrative actions that constitute claims against the City. The quest to gain coverage of remedial expenses incurred in resolving those claims is no longer the speculative adventure that it was in 2015.

Proposed Agreement Terms –

- **Term:** Three years from date of signature (approximately 2022-2025)
- **Contract Authority:** Maximum amount not to exceed \$500,000
- **Scope of Work:** Litigating and resolving complex insurance coverage disputes
- **Standard City and City Attorney Agreement provisions**

**WAIVER OF POTENTIAL CONFLICTS**

With over 900 lawyers in the United States, Asia, Europe and the Middle East, Hunton Andrews Kurth LLP serves clients across a broad range of complex transactional, litigation and regulatory matters. Hunton currently represents Chevron and its affiliates in connection with the investigation and assessment of hydrocarbon contamination required by the Regional Water Quality Control Board at Berths 78 and 100 where Chevron previously had operations.<sup>2</sup> Hunton also represents Ultramar, Inc. (and its

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<sup>2</sup> The City resolved its claims against Chevron regarding residual contamination at Berth 100 in a 2005 settlement that provides indemnity against any demands from the RWQCB. Chevron reimbursed the City for remediation costs incurred for the first phase of remediation at Berth 78 and is expected to do the same for the next phase upon relocation of the Fish Market.

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parent Valero Energy Corporation and affiliates), NuStar Energy, L.P., and Shore Terminals, LLC in connection with the development, construction, permitting and environmental approvals for the MOTEMS upgrade of the marine oil terminal wharf at Berths 162-164. Neither of these matters are in any way related to the City's insurance coverage disputes, and in both of these matters, the parties are currently in a cooperative posture.

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is the approval of a legal services agreement between the Harbor Department and Hunton Andrews Kurth LLP for legal services for insurance coverage 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 for the approval of an Agreement for legal services with Hunton for a three-year term and compensation authority of \$500,000. The Harbor Department is financially responsible for payment for legal services rendered under the proposed Agreement.

Funding in the amount of \$75,000 is available in FY 2021/22, and funding in the amount of \$187,500 is being requested for FY 2022/23, both in the Operating Budget within the Harbor Department City Attorney's Office (Center 0120), Account No. 54410 (Legal Fees & Services), 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 Agreements. Spending under the proposed Agreements is detailed below:

<b>Firm</b>	<b>FY 21/22</b>	<b>FY22/23</b>	<b>FY 23/24</b>	<b>FY 24/25</b>	<b>TOTAL</b>
Hunton Andrews Kurth	\$75,000	\$187,500	\$200,000	\$37,500	\$500,000

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**CITY ATTORNEY:**

The Office of the City Attorney has reviewed Hunton's request for waiver of potential conflicts of interests and finds that the Board can make the decision for the Harbor Department matters identified. The Office has also prepared and approved the proposed Agreement as to form and legality.

**TRANSMITTALS:**

1. Request to Waive Potential Conflicts of Interest
2. Legal Services Agreement with Hunton Andrews Kurth LLP

FIS Approval: MB

CA Approval: SO

Kenneth F.  
Mattfeld

Digitally signed by Kenneth F. Mattfeld  
DN: cn=Kenneth F. Mattfeld, o=LOS  
ANGELES CITY ATTORNEY'S OFFICE,  
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KENNETH MATTFELD  
Deputy City Attorney

APPROVED:

By Steven Otera  
STEVEN OTERA  
Acting General Counsel, Harbor Department

APPROVED:

By Marla Bleavins  
EUGENE D. SEROKA  
Executive Director

Board Meeting: April 14, 2022