

HARBOR DIVISION

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**DATE: MAY 13, 2021**

**FROM: OFFICE OF THE CITY ATTORNEY**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - LEGAL SERVICES AGREEMENT  
BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND  
THOMPSON COBURN LLP FOR FEDERAL CLEAN AIR ACT MATTERS**

**SUMMARY:**

The Office of the City Attorney (Office) requests the Board of Harbor Commissioners' (Board) approval of a Legal Services Agreement (Agreement) between the City of Los Angeles Harbor Department (Harbor Department) and the law firm of Thompson Coburn LLP (Thompson Coburn) for legal services for San Pedro Bay Ports Clean Air Action Plan (CAAP) and Federal Clean Air Act (FCAA) matters. The proposed term of the Agreement is three years. The proposed compensation authority is \$225,000. The Harbor Department is financially responsible for payment for legal 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;

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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 a Legal Services Agreement with Thompson Coburn LLP in the amount of \$225,000 for a three-year term;
4. Authorize the Executive Director and Board Secretary to execute and attest to the Agreements; and
5. Adopt Resolution No. \_\_\_\_\_.

**DISCUSSION:**

Background – In accordance with Charter Section 275, the Office has determined that it requires outside legal counsel to assist it in the discharge of its duties to perform legal services in connection with the San Pedro Bay Ports CAAP and FCAA matters requiring specialized expertise and resources that exceed staff resources in this highly specialized area of law. Since 2007 through the present, the Office has had an outside counsel agreement for legal services for CAAP matters, with different counsel over the years. The immediately prior Agreements with Meyers Nave and Thompson Coburn each had a term of three years that expired on January 16, 2021.

Need for Services and Scope of Work – The proposed Agreement with Thompson Coburn (Transmittal 1) is necessary to augment the Harbor Division's ability to provide litigation services and regulatory advice in connection with the CAAP, and regulations affecting the Harbor Department in proposed regulation by the South Coast Air Quality Management District (SCAQMD), California Air Resources Board (CARB) and the U.S. Environmental Protection Agency (EPA).

Competitive Counsel Selection Process – On September 3, 2020, the Office issued a competitive Request for Proposals (RFP) for outside legal counsel for Federal Clean Air Act and Air Agency Regulation and Litigation. The Office received five (5) submissions from law firms. Based upon their RFP proposals and interviews, the Office recommends Meyers Nave APC and Thompson Coburn as the most qualified and in the best interests of the Harbor Department to provide such legal services. The Board approved a legal services agreement for CAAP and FCAA matters for Meyers Nave on April 1, 2021. Thompson Coburn possess specialized legal expertise and relevant experience. Additionally, the Office has developed a specific strategy to best leverage the two firms' (Meyers Nave and Thompson Coburn) different areas of expertise and rates to best meet

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the Department's anticipated needs for CAAP/FCAA litigation services and regulatory advice.

**PROPOSED AGREEMENT TERMS:**

- **Term:** Three years from date of signature (approximately 2021-2024)
- **Contract Authority:** Maximum amount not to exceed \$225,000
- **Scope of Work:** Litigation services and regulatory advice for CAAP/FCAA and related matters
- **Standard City and City Attorney Agreement provisions:** Including PSC-18 attached as Exhibit A to Agreement. All provisions are standard, with modified indemnity language, which has been approved by the Risk Management Division and City Attorney:

**"Indemnity for Professional Liability**

Except for the sole negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Contractor undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Contractor's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the wrongful negligent acts, errors, wrongful omissions or negligence of Outside Counsel its boards, officers, agents, employees or subconsultants willful misconduct incident to the performance of this Contract by Contractor or its subcontractors of any tier. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the City. Notwithstanding the foregoing, as to any matters that could be covered by Counsel's professional liability insurance if asserted without regard to this section, nothing in this section shall expand Counsel's duties and obligations under tort law or create any independent obligation for the same under contract law. The foregoing indemnification provision shall control the parties' rights and supersedes the provisions of PSC-18 in the Standard Provisions For City Contracts."

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**Ethical Wall Requirement:** On May 20, 2021, the Board approved a waiver of potential conflict, to allow Thompson Coburn to assist the Office with legal services for the Harbor Department's CAAP and FCAA regulatory and litigation matters, while continuing the firm's representation of Six Cities in state and federal energy regulatory matters. On May 26, 2021, the Board of Water and Power Commissioners also approved the waiver of potential conflict on behalf of Los Angeles Department of Water and Power (LADWP). The firm confirmed in its March 25, 2021 conflict waiver request that Thompson Coburn will have different attorneys representing the City in these CAAP-FCAA matters than the attorneys working on matters for the Six Cities, and they committed to not sharing information about its representation of The City with the attorneys working on matters for the Six Cities. Therefore, this Board resolution, when adopted, confirms the City conditions its contract approval herein upon Thompson Coburn's maintenance of an "ethical wall" between the two separate teams of City and Six Cities attorneys, as represented in its waiver request letter.

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is the approval of legal services agreement with Thompson Coburn for ongoing legal services for CAAP/FCAA litigation services and regulatory advice, 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 for a three-year term and a total compensation authority of \$225,000. The Harbor Department is financially responsible for payment for legal services rendered under the proposed Agreement. Funding in the amount of \$63,000 has been proposed in the Fiscal Year 2021-22 Operating Budget within the Harbor Department City Attorney's Office Account No. 54410 (Legal Fees & Services), Division No. 0120 and Program No. 000, upon Board approval. 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	\$63,000
FY 2022-23	\$88,300
FY 2023-24	\$73,700
<b>Total</b>	<b>\$225,000</b>

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CAAP AND FCAA MATTERS

**CITY ATTORNEY:**

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

**TRANSMITTALS:**

1. Proposed Legal Services Agreement with Thompson Coburn LLP

FIS Approval: MB

CA Approval: SO

*Steven Otera*  
JOY M. CROSE  
Assistant City Attorney

APPROVED:

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

APPROVED:

By *Marla Bleavins*  
EUGENE D. SEROKA  
Executive Director