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**THE PORT
OF LOS ANGELES**
Executive Director's
Report to the

Board of Harbor Commissioners

DATE: SEPTEMBER 30, 2015

FROM: WATERFRONT & COMMERCIAL REAL ESTATE

**SUBJECT: RESOLUTION NO. _____ – APPROVAL OF THE
FOURTH AMENDMENT TO AGREEMENT NO. E6530 BETWEEN THE
CITY OF LOS ANGELES HARBOR DEPARTMENT AND THE MAXIMA
GROUP, LLC**

SUMMARY:

Approval is requested of the Fourth Amendment to the Professional Services Agreement between the City of Los Angeles Harbor Department (Harbor Department) and The Maxima Group, LLC (Maxima), a Los Angeles based firm that provides the Harbor Department with financial, real estate, and economic consulting services relating to commercial development sites at the Port of Los Angeles (Port). Staff requests an increase in funding in the amount of \$20,000 for this agreement in order for Maxima to continue providing support to the Harbor Department's Lease Negotiating Team through the conclusion of the Ports O' Call Village (Ports O' Call) development project ground lease.

Agreement No. E6530 (Agreement) was originally approved on October 29, 2009 as a one-year Executive Director Agreement in the amount of \$150,000. The First Amendment extended the Agreement through April 27, 2012, and increased the contract amount by \$243,450 to \$393,450; the Second Amendment extended the Agreement for an additional 18 months, and increased the funding amount by \$95,000 to \$488,450; the Third Amendment extended the Agreement for 24 months, and increased the funding by \$100,000 for a current contract total of \$588,450. All amendments were approved by the Board of Harbor Commissioners (Board), and the expiration date of the Agreement is October 27, 2015. The Fourth Amendment will extend the Agreement an additional six months through April 27, 2016 for a total contract term of six and a half years, and the \$20,000 increase will bring the total contract amount to \$608,450. Los Angeles City Council (City Council) approval is required to ratify and approve the Second, Third, and Fourth Amendments for a contract term in excess of three years. The Harbor Department is financially responsible for payments under the 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 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. Approve the Fourth Amendment to Agreement No. E6530 with The Maxima Group, LLC to extend the term, increase the Agreement authority by an additional \$20,000 from \$588,450 to \$608,450, and extend the Agreement for an additional six months through April 27, 2016;
3. Direct the Board Secretary to transmit the Second, Third and Fourth Amendments to City Council for the ratification and approval pursuant to Charter Section 373 and Section 10.5 of the Los Angeles Administrative Code;
4. Authorize the Executive Director to execute and the Board Secretary to attest to the Fourth Amendment to Agreement No. E6530 upon approval by City Council; and
5. Adopt Resolution No. _____.

DISCUSSION:

Background – On October 29, 2009, the Harbor Department entered into the Agreement (Transmittal 1) with Maxima to assist with the process of selecting a development team for commercial development sites along the San Pedro and Wilmington waterfront project areas, including Ports O' Call Village and Cabrillo Way Marina. The services include conducting extensive research and developer outreach to determine the most effective commercial development strategy. The Agreement had a one-year contract term, with compensation not to exceed \$150,000. The First Amendment (Transmittal 2) was approved by the Board on October 7, 2010, which extended the contract for an additional 18 months through April 27, 2012, and increased the funding authority by \$243,450 to a total of \$393,450. This extension enabled a continuation of services to support waterfront development strategies by conducting the highest and best use evaluation of selected Port properties, including the adaptive reuse of Warehouse Nos. 9 and 10. The First Amendment also amended the scope of work to include assistance developing criteria for evaluating a potential term extension for a hotel ground lease.

On March 15, 2012, the Board approved the Second Amendment (Transmittal 3) extending the contract for an additional 18 months through October 27, 2013, and increased the funding by \$95,000 to \$488,450. With the additional time, Maxima assisted the Harbor Department by: (1) marketing the Warehouse Nos. 9 and 10 development opportunity, and providing advisory services during negotiations for the long-term lease with CRAFTED at the Port of Los Angeles; and (2) marketing the Ports O'Call development opportunity, providing developer outreach to secure quality proposals, providing industry information and due diligence support for the developer recommendation for the Ports O' Call development site and reviewing the Exclusive Negotiations Agreement (ENA) document.

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On July 9, 2013, the Board approved the Third Amendment (Transmittal 4) to the Agreement, which increased funding by \$100,000 to a total of \$588,450, and extended the term by 24 months to expire on October 27, 2015. The approval of the Third Amendment allowed Maxima to continue providing consulting services following the selection of the Ports O' Call Developer.

Ports O' Call - On February 21, 2013, the Board approved staff's recommendation to enter into an ENA with the LA Waterfront Alliance (Developer) for the Ports O' Call redevelopment project. The ENA provides the framework for negotiations between the Harbor Department and Developer with the goal of securing a ground lease. The ENA term requires both parties to perform due diligence activities, including financial and market analysis, business plan and lease-up strategies, California Environmental Quality Act (CEQA) determination and public outreach. The ENA was most recently extended until the end of 2015.

On July 13, 2015, the Developer and the Harbor Department reached an agreement on a non-binding term sheet which outlined commercial terms for the proposed 50-year ground lease for Ports O'Call. The Harbor Department and the Developer are currently negotiating the terms of the 50-year ground lease, which is expected to be completed by the end of 2015.

Contract History

The Agreement was originally approved as a one-year Executive Director Agreement on October 29, 2009 in the amount of \$150,000. The First Amendment extended the Agreement through April 27, 2012, and increased the contract amount to \$393,450; the Second Amendment extended the Agreement for an additional 18 months, and increased the funding amount to \$488,450; the Third Amendment extended the Agreement for 24 months, and increased the funding by \$100,000 for a current contract total of \$588,450. All amendments were approved by the Board, and the expiration date of the Agreement is October 27, 2015. The Fourth Amendment will extend the Agreement through April 27, 2016 for a contract term of six and a half years and the \$20,000 increase will bring the total contract amount to \$608,450. City Council approval is required to ratify and approve the Second, Third, and Fourth Amendments for a contract term in excess of three years. The Harbor Department is financially responsible for payments under the Agreement.

City Council Ratification and Approval

The City Council has power to ratify the Second, Third and Fourth Amendments to increase the term and contract amount. "The principle of ratification has been said to apply to a municipal corporation the same as to an individual as to contracts which without authority have been entered into in its behalf, if it could have originally authorized such contracts. Or, as it is sometimes stated, an invalid contract may be ratified if it is one in which the municipal corporation could make and which is not void by reason of noncompliance with some mandatory provision of the law." McQuillin, Municipal Corporations, §29.104 (2009 Ed.). In order to ratify the past unauthorized

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act, the City Council would need to follow all formalities and make all findings it would have been required to make if it had adopted the Second and Third Amendments at that time (e.g., make a determination under Charter Section 1022). Here, City Council had the authority at the time to have approved the Second and Third Amendments. Therefore, while the required approval was not obtained initially, the City Council can now ratify the Second and Third Amendments with the result having the effect of duly adopted amendments to the Agreement.

Proposed Fourth Amendment (Transmittal 5) - The extension of this Agreement would allow Maxima to provide critical support services to the Harbor Department's Lease Negotiating Team in the preparation and review of the final Port's O' Call ground lease. Due to the Ports O'Call ENA extension, the Harbor Department requires additional time and funds to maintain Maxima's engagement in the Ports O'Call ground lease negotiations.

Long-Term Development Program - The Harbor Department continues to require consultant services for the larger LA Waterfront development program, which includes various development sites in San Pedro and Wilmington.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a Fourth Amendment to an agreement with Maxima to increase the amount and extend the term of an agreement for consulting services for the negotiations of a lease for the Ports O'Call site. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

ECONOMIC BENEFITS:

Approval of the proposed Fourth Amendment will have very minor (less than one) employment impact for the five-county region.

FINANCIAL IMPACT:

The proposed Fourth Amendment increases the current Agreement authority by an additional \$20,000 from \$588,450 to \$608,450 and extends the Agreement term by an additional six months through April 27, 2016. Since inception of the original \$150,000 one-year Executive Director Agreement that began on October 28, 2009, a total of \$573,200 has been spent under the terms of the Agreement. Funds for Fiscal Year 2015/2016 in the amount of \$35,250 have been budgeted and are available in the Waterfront & Commercial Real Estate Division in Account No. 54290, Center 0429, Program 000. A Funding Out Clause has been included in the original Agreement.

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CITY ATTORNEY:

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

TRANSMITTALS:

1. Agreement No. E6530
2. First Amendment
3. Second Amendment
4. Third Amendment
5. Fourth Amendment



MICHAEL J. GALVIN
Director of Waterfront & Commercial Real Estate

FIS Approval: MB (initials)
CA Approval: DL (initials)



DOANE LIU
Deputy Executive Director
& Chief of Staff

APPROVED:



 EUGENE D. SEROKA
Executive Director

ES:MD:MG:VD:cb
Author: V. Dorfman
BL542cb Maxima 4th Amendment