



Executive Director's
Report to the

Board of Harbor Commissioners

DATE: NOVEMBER 29, 2010

FROM: ENGINEERING DIVISION

SUBJECT: RESOLUTION NO. _____ FIRST AMENDMENT - PERSONAL SERVICES AGREEMENT NO. 2644 BETWEEN THE CITY OF LOS ANGELES AND J.L. PATTERSON & ASSOCIATES, INC. FOR THE BERTH 200 RAIL YARD PLANNING, ENGINEERING AND ARCHITECTURAL DESIGN SERVICES

SUMMARY:

Agreement No. 2644 (Agreement) between the City of Los Angeles Harbor Department (Harbor Department) and J.L. Patterson & Associates, Inc. (Consultant), Orange, California to provide planning, engineering, and architectural design services for the Berth 200 Rail Yard project was approved by the Board of Harbor Commissioners (Board) on March 7, 2008. This First Amendment (Transmittal No. 1) will revise the project's scope of work to avoid existing third party utilities, reduce construction costs, and mitigate adverse impacts to the project schedule. This action, if approved by the Board, will authorize the addition of \$957,619 in funds to the contract. The total revised contract amount, including all change orders totaling \$854,350 to date, will be \$8,011,969 versus the original contract amount of \$6,200,000.

RECOMMENDATIONS:

It is recommended that the Board of Harbor Commissioners:

1. Find that in accordance with the City of Los Angeles (City) Charter Section 1022, work covered under the subject Amendment can be performed more feasibly by an independent consultant rather than by City employees;
2. Approve this First Amendment to Agreement No. 2644 with J.L. Patterson & Associates, Inc. for an increased amount of \$957,619;
3. Authorize the Executive Director to execute and the Board Secretary to attest to said Amendment for and on behalf of the Board;
4. Approve Change Order Nos. 1-15 totaling \$854,350 thus reinstating the future change order authority up to 15% of the revised contract amount of \$8,011,969; and
5. Adopt Resolution No. _____.

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DISCUSSION:

Background – The Harbor Department is in the process of redeveloping the TraPac container terminal located at Berths 142-147, which includes construction of an on-dock rail yard. TraPac is currently the only container terminal within the Port of Los Angeles (Port) without an on-dock rail yard. The existing Pier A Yard occupies approximately 30 acres of property where the Harbor Department proposes to construct TraPac's on-dock rail yard area. The Harbor Department must therefore, relocate the Pier A Yard to allow for the proposed Berths 142-147 terminal redevelopment project.

The Pier A Yard is operated by Pacific Harbor Line (PHL), under contract with the Harbor Department to provide rail switching and dispatching services for Harbor Department customers, and maintain the Harbor Department's rail network. Agreement No. 1988, among the City, BNSF Railway Co., and Union Pacific Railroad Co., and Agreement No. 1989 between the City and PHL, stipulates that if the Harbor Department decides to remove the Pier A Yard from service, the Harbor Department is obligated to construct a replacement rail yard as described in Exhibit C of Agreement No. 1988 and Exhibit H of Agreement No. 1989, and make this replacement yard available to PHL to fulfill its obligations under Agreement No. 1989.

The Harbor Department proposes to relocate the existing Pier A Yard facility and the associated rail switching, classification, and storage operations to a new facility at the Berth 200 Rail Yard. In addition, the Harbor Department will improve the mainline track to the West Basin branch line and construct new intermodal storage yard tracks. The storage yard tracks will support the existing West Basin on-dock rail facility and the proposed Berths 142-147 on-dock rail facility under the Berth 200 Rail Yard project.

The Harbor Department must construct the Berth 200 Rail Yard project and relocate PHL's operations to the new Berth 200 Rail Yard prior to commencing construction for the Berth 142-147 On-Dock Rail Yard project. The Harbor Department has committed to TraPac the delivery of the completed Berths 142-147 On-Dock Rail Yard improvements by September 30, 2015.

On March 7, 2008, the Board approved Agreement No. 2644 with the Consultant providing planning, engineering, and architectural design services for the Berth 200 Rail Yard project in the amount of \$6,200,000 with a contract term of three years. The Consultant commenced with preliminary project planning and design on April 15, 2008. As a part of this process, the Consultant and Harbor Department staff met with utility owners who operate existing oil pipeline utilities in the vicinity of the proposed Berth 200 Rail Yard improvements. As a result of these discussions, the Harbor Department has determined that Valero Energy Corporation, Tidelands Oil Production Company, and Air

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Products Corporation, retain permanent easement rights within the proposed project limits to maintain and operate utility pipeline facilities. In order to construct the proposed project improvements as currently envisioned, the Harbor Department is required to relocate and protect these pipeline facilities. This work is currently estimated at \$30,000,000. The Harbor Department has discovered other unforeseen existing utility impacts, including protection of a major Los Angeles County Flood Control District storm drainage structure and protection of existing Department of Water and Power water lines at a cost of \$10,000,000. The total cost of unforeseen utility relocation and protection costs is estimated at \$40,000,000. The cost to perform this work is the sole responsibility of the Harbor Department.

The preliminary construction cost for the Berth 200 Rail Yard project was \$105,000,000. Adding the additional \$40,000,000 in unforeseen utility relocation costs will increase the project construction cost to \$145,000,000. The ten-year Capital Improvement Program anticipates a construction budget of \$105,000,000 for the Berth 200 Rail Yard project. Funds are not currently proposed or available for the additional \$40,000,000 in utility relocations.

In addition, these unforeseen utility relocations and protections will adversely impact the project schedule. Although a general understanding of these utility impacts has been determined, the Harbor Department must still meet with the affected companies, negotiate, and agree on the most appropriate, cost effective method to relocate and protect the lines, then enter into agreements with each party. This process is anticipated to take 12-18 months to complete based on the complexity of addressing multiple third parties with conflicting interests. If the project schedule is increased by this amount of time, the Harbor Department will not be able to meet its commitment to TraPac to deliver Berths 142-147 On-Dock Rail Yard improvements by September 30, 2015.

In order to reduce the project cost and schedule impacts, Harbor Department staff directed the Consultant to prepare a Cost Reduction Study to identify how the Harbor Department could reduce costs and mitigate schedule by constructing the Berth 200 Rail Yard in two phases. Phase 1 will construct the minimal amount of mainline rail, storage tracks, crossing protection, and signalization necessary to maintain PHL's operation at the proposed Berth 200 facility. Phase 2 would construct the remaining improvements as a separate, future project, if required to accommodate future rail traffic in the West Basin.

The Cost Reduction Study recommends the Phase 1 project include construction of the Pier A Yard replacement component that is contractually required, intermodal container car storage tracks to support the future Berths 142-147 On-Dock Rail Yard, and a reduced amount of mainline track improvements that will still ensure acceptable levels of rail traffic flow in the general vicinity (Transmittal No. 2). The cost of these reduced improvements is estimated at \$100,000,000. The future Phase 2 project improvements involve construction of the remaining improvements included in the original project

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scope, 1) the additional mainline track improvements, and 2) additional intermodal container storage tracks to support the existing West Basin On-Dock Rail Yard at a preliminary cost of \$59,000,000. The total cost to phase the construction of the project improvements is \$159,000,000 vs. \$145,000,000, if all improvements were constructed at one time. The \$14,000,000 differential is a result of temporary tie in and re-work effort required between phases.

The Cost Reduction Study concluded that the Phase 2 improvements could be delayed and constructed as a future project without significantly impacting rail operations or increasing mainline traffic congestion.

Harbor Department staff recommends building the Berth 200 Rail Yard project using this two phased approach, which allows construction of the project within the original budget and schedule commitment to relocate the Pier A Yard and construct the Berths 142-147 On-Dock Rail Yard by September 30, 2015. Constructing only the Phase 1 project improvements now will also meet the Harbor Department's contractual requirements with the railroads and PHL to provide a replacement yard of comparable utility if the existing Pier A Yard is removed.

Grant Funding - Grants received to date (\$75,814,000) are as follows:

- Metro (\$8,584,000) – United State Department of Transportation (USDOT) Regional Surface Transportation Program – Funds will lapse on June 30, 2012 if construction is not initiated by this date.
- USDOT TIGER II (\$16,000,000) – Funds must be obligated by September 30, 2012; (obligation application requires prior approval by Caltrans for advertising). The Goods Movement Division will be working with USDOT and the Engineering Division on a funding agreement.
- State (\$51,230,000) – State Proposition 1B Trade Corridors Improvement Fund (TCIF) – The Southern California TCIF projects have been over-programmed by about \$148,000,000, which means that some projects might not be funded (assuming this over-programming is not resolved) as funds will be allocated on a first come, first serve basis. Hence, receiving funding is not absolutely guaranteed with our previously executed "Baseline Agreement" with the State, and it will be critical to complete the final design phase as soon as possible. Also, the TCIF grant will be forfeited if construction does not commence by December 31, 2013. The Harbor Department expects to seek an allocation of the TCIF prior to notice of advertisement.

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First Amendment - Staff recommends that it is in the best interest of the City to revise the original Berth 200 Rail Yard project scope of improvements, by separating the project into two phases and direct the Consultant to modify and complete the recommended Phase 1 design for the following reasons:

- a. The proposed Amendment will allow the Harbor Department to meet its schedule commitment to TraPac with construction of the Berths 142-147 On-Dock Rail Yard by September 30, 2015.
- b. The proposed Amendment will allow the project to be completed within the existing budgeted amount.
- c. The proposed Amendment will allow the Harbor Department to meet the current State and Federal grant fund schedule requirements. If the project schedule is significantly delayed, an extension to the grant funding completion date would be requested by the appropriate authorities. However, staff cannot guarantee that the State and Federal authorities would approve this request, thereby risking the loss of the grant funding of up to \$75,814,000.

To date, \$5,112,083 has been expended for a total contract amount of \$7,054,350. The Consultant has completed the majority of the 100% Plans Specifications & Estimates (PS&E) for the original scope of improvements. This First Amendment will allow the Consultant to modify and complete the design plans, including 100% design and final signature PS&E submittals, and provide engineering services during construction.

Staff has renegotiated the design Agreement to modify and incorporate the reduced Phase 1, Berth 200 Rail Yard project improvements. This First Amendment will authorize the addition of funds in the amount of \$957,619, for a total contract amount of \$8,011,969 (Transmittal No. 3). The Consultant's labor rates have remained the same throughout the duration of the contract. Staff has directed the Consultant to stop design on the project pending additional budget authorization and approval by the Board for the additional scope of work.

Small Business Enterprise Participation - Throughout the term of this Agreement, the Consultant will continue to maintain compliance with the City's contracting requirements. J.L. Patterson & Associates is a Small Business Enterprise (SBE) and they will receive 100% credit for their participation in the Port's SBE program.

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This Agreement is in conformance with both the City of Los Angeles Service Contract Worker Retention and Living Wage Ordinances.

ENVIRONMENTAL ASSESSMENT:

The proposed action is an Amendment to Agreement No. 2644 to increase funding for planning, engineering, and design work related to the Berth 200 Rail Yard project. As an administrative action, 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.

ECONOMIC BENEFITS:

Spending under the original contract with J.L. Patterson & Associates, Inc. would have supported 44 direct, plus 57 secondary one-year equivalent jobs in the five county region. Spending under the amended Agreement to increase the contract amount will result in 54 direct and 71 secondary one-year equivalent job impacts in the region.

FINANCIAL IMPACT:

To date, \$5,112,083 has been expended of the total contract amount of \$7,054,350. The financial impact of the proposed Amendment is that an additional \$957,619 will be added to the contract, bringing the revised total contract amount to \$8,011,969. Funds for the current Fiscal Year 2010/2011 are available in Account No. 54220, Center No. 1172, Program No. 000.

Funds for this Amendment are estimated to be expended as follows:

Fiscal Year 2010/2011 -	\$657,619
Fiscal Year 2011/2012 -	<u>\$300,000</u>
Total	\$957,619

This proposed amount reflects the fixed fee negotiated with the Consultant for the work remaining to be performed for Phase 1. If needed and subject to Board approval, further Fiscal Year funding will be requested to be budgeted in Account No. 54220, Center No. 1172, Program No. 000, as part of the annual budget adoption process.

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Agreement No. 2644 Financial Summary	
Original Contract Amount	\$ 6,200,000
Change Order Total to Date* (See Transmittal No. 4)	\$ 854,350
Revised Contract Amount	\$ 7,054,350
First Amendment	\$ 957,619
Proposed Contract Amount	\$ 8,011,969

*The contract delegated authority to the Executive Director to issue change orders up to an additional 15% of the contract amount (\$930,000). This provision is not included in new contracts approved by the Board.

Total cost (inclusive of design and construction services) is estimated at \$125,000,000 through Fiscal Year 2013/2014.

The Harbor Department has been awarded \$75,814,000 in grants from the State and Federal agencies to fund the construction phase of this project. Future funding requests associated with this project will be brought before the Board for approval under separate actions.

Estimated Phase 1 Cost/Funding Summary	
Total Cost	\$125,000,000
Outside Funding	\$ 75,814,000
POLA Funding	\$ 49,186,000

Although the Consultant is not obligated to perform any work under the Agreement in any Fiscal Year in which no appropriation for the Agreement has been made, the Consultant agrees to resume performance of the work required by the Agreement on the same terms and conditions for a period of 60 days after the end of the Fiscal Year if an appropriation is approved by the Board within that 60-day period. The Consultant is responsible for maintaining all insurance and bonds during this 60-day period. The time for performance shall be extended during this period until the appropriation is made; however, such extension of time is not compensable.

If in any subsequent Fiscal Year funds are not appropriated by the Board for the work required by the Agreement, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

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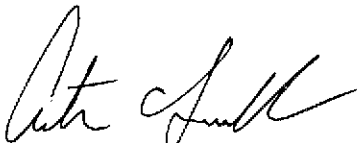
CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved the First Amendment to Agreement No. 2644 as to form and legality.

TRANSMITTALS:

1. First Amendment to Agreement No. 2644 between the City of Los Angeles and J.L. Patterson, Inc.
2. Exhibit A – First Amendment – Project Description
3. Exhibit D – First Amendment – Method of Compensation
4. Summary of Change Orders Issued to Agreement No. 2644

FIS Approval: WJ (initials)


ANTONIO V. GIOIELLO
Chief Harbor Engineer


FOR MICHAEL R. CHRISTENSEN, P.E.
Deputy Executive Director, Development

APPROVED:


for GERALDINE KNATZ, Ph.D.
Executive Director

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