

HARBOR DIVISION

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**DATE: AUGUST 13, 2014**

**FROM: OFFICE OF THE CITY ATTORNEY**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - APPROVE FIRST AMENDMENT TO AGREEMENT E-6727 BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND CROWELL & MORING, LLC**

**SUMMARY:**

The Office of the City Attorney requests approval of a First Amendment to Executive Director Agreement No. E-6727 with Crowell & Moring, LLC, extending the one-year term of the Agreement by two more years. The extension is necessary due to postponement of the trial in *City of Los Angeles v. National Union Fire Insurance Co. of Pittsburgh, PA* (U.S. District Court Case No. 12-cv-07662). No additional funds are requested.

**RECOMMENDATION:**

It is recommended that the Board of Harbor Commissioners:

1. Approve the First Amendment to Agreement No. E-6727 with Crowell & Moring, LLC, extending the one-year term to a total of three years;
2. Authorize the Executive Director to execute and the Board Secretary to attest to the First Amendment to Agreement E-6727; and
3. Adopt Resolution No. \_\_\_\_\_.

**DISCUSSION:**

Mark Troy of Crowell & Moring, LLC was retained under Executive Director Agreement E-6727 to generate an expert opinion report and to provide expert witness trial testimony in *City of Los Angeles v. National Union Fire Insurance Company of*

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*Pittsburgh, PA*, (U.S. District Court Case No. 12-cv-07662), regarding the defense of False Claims Act suits in general and more particularly the efficacy of the City's strategy and tactics in defense of *United States ex rel Stanley Mosler v. City of Los Angeles et al.* (U.S. District Court Case No. 02-cv-02278). The term of the one-year Executive Director Agreement commenced September 20, 2013.

The February 4, 2014 trial date in *City v. National Union* was vacated when the trial court certified its order of December 26, 2013 for immediate appeal. The City's petition requesting interlocutory review is pending before the Ninth Circuit Court of Appeals.

Extension of the Agreement is necessary to keep Mr. Troy retained for the trial. The contract appropriation is \$65,000. The amount budgeted per year is hourly billings with no retainer fee. A total of \$12,522 has been billed to date. The balance (\$52,478) will be adequate to cover Mr. Troy's trial testimony.

**CONCLUSION:**

Extending the term of Agreement E-6727 will keep Mr. Troy retained to serve as a testifying expert at the eventual trial in *City of Los Angeles v. National Union Fire Insurance Company of Pittsburg, PA*.

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval to extend Executive Director Agreement E-6727 with Mark Troy of Crowell & Moring LLC by two years. 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 IMPACT:**

Approval of the proposed Amendment will have no employment impact.

**FINANCIAL IMPACT:**

Funding for the proposed First Amendment in the amount of \$41,983 has been included in the approved FY 2014-15 Operating Budget, within the Harbor Department City Attorney's Office Account No. 54410, Division No. 0120, and Program No. 000.

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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 was included in the original Agreement.

Firm	FY 13/14	FY14/15	FY 15/16	TOTAL
Crowell & Moring, LLC	\$ 12,522	\$ 41,983	\$10,495	\$65,000

**CITY ATTORNEY:**

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

**TRANSMITTAL:**

1. First Amendment to Agreement E-6727 extending its term from one to three years

FIS Approval: KR (initials)

CA Approval: JS (initials)

  
\_\_\_\_\_  
KENNETH F. MATTFELD  
Deputy City Attorney

  
\_\_\_\_\_  
JANNA B. SIDLEY  
General Counsel

APPROVED:

By   
\_\_\_\_\_  
EUGENE D. SEROKA  
Executive Director