

HARBOR DIVISION

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**DATE: AUGUST 29, 2023**

**FROM: OFFICE OF THE CITY ATTORNEY**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - FIRST AMENDMENT TO LEGAL SERVICES AGREEMENT NO. 22-9911 WITH NOSSAMAN LLP FOR THE HARBOR PERFORMANCE ENHANCEMENT CENTER, LLC LITIGATION**

**SUMMARY:**

The Office of the City Attorney (Office) at the City of Los Angeles Harbor Department (Harbor Department) requests approval of a First Amendment to Agreement No. 22-9911 (Amendment) with Nossaman LLP (Nossaman). The proposed First Amendment will increase the Agreement authority by \$988,625, from \$150,000 currently, to \$1,138,625 as proposed. The three-year Agreement term will remain unchanged; the Agreement will expire on December 7, 2025.

The additional funding will allow Nossaman to continue to represent the Port of Los Angeles in ongoing litigation related to the *Harbor Performance Enhancement Center (HPEC), LLC v. City of Los Angeles Harbor Department, et al* (state court action identified as Superior Court Case No. 21STCV15500). The Harbor Department will continue to be financially responsible for payment of expenses incurred 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 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. Find that, in accordance with Charter Section 1022, 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 the First Amendment to Agreement No. 22-9911 with Nossaman, to increase the agreement authority by \$988,625 from \$150,000 to \$1,138,625;
4. Authorize the Executive Director to execute and the Board Secretary to attest to the First Amendment; and
5. Adopt Resolution No. \_\_\_\_\_.

**DISCUSSION:**

Background – In accordance with Charter Section 275, the Office has determined that it requires outside legal counsel to perform litigation support services for real estate matters including legal services necessary to support ongoing litigation for the case entitled *HPEC, LLC v. City of Los Angeles Harbor Department, et al* (state court action identified as Superior Court Case No. 21STCV15500). Following a competitive Request for Proposals (RFP) process in 2019, Nossaman was retained under Agreement No. 19-3668 (Transmittal 1). The Agreement term commenced July 20, 2019 and the firm has actively assisted the Harbor Department in general real estate matters and legal services related to the HPEC litigation. The Agreement was amended four times (Transmittals 2-5) to add funds and extend the term from three years to five years (July 20, 2019 to July 19, 2024).

Termination of Agreement No. 19-3668 – Under Agreement No. 19-3668 legal services for HPEC included a petition for a writ of mandate, identified as Superior Court Case No. 19STCP02431 entitled *HPEC, LLC v. City of Los Angeles Harbor Department*, an administrative claim filed with the City Clerk arising out of the same facts, a federal action including an appeal, identified as United States District Court Case No. 2:20-cv-03251-PSG-MAA entitled *HPEC, LLC v. City of Los Angeles Harbor Department, et al.*, and a new state court action identified as Superior Court Case No. 21STCV15500 entitled *HPEC, LLC v. City of Los Angeles Harbor Department*.

To date (through June 30, 2023), \$1,809,599 in spending has been incurred under Agreement No. 19-3668 and the remaining authority is \$464,051. Agreement No. 19-3668 included a “Termination due to Non-Appropriation of Funds” Section. This section states that the Board, in awarding this Agreement, is expected to appropriate sufficient

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funds to meet the estimated expenditure of funds through June 30 of the current fiscal year and to make further appropriations in each succeeding fiscal year during the life of the Agreement. However, the Board is under no legal obligation to do so. 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.

New Agreement No. 22-9911– On June 16, 2022, the Office released a RFP for new contracts for real estate matters. After reviewing all eight (8) of the submissions, the Office requested and received Board approval of a new Agreement for real estate matters with Nossaman (Transmittal 6). The Board approved a three-year Agreement with a \$150,000 maximum compensation on November 17, 2022. The term of the Agreement commenced on December 8, 2022 and continues to December 7, 2025.

Proposed First Amendment to Agreement No. 22-9911 and Scope of Services– The firm’s involvement with the administration claim, federal action, pre-litigation, and mediation make it difficult and impractical to engage new counsel at this time. Increasing the authority of Agreement 22-9911 will allow Nossaman to continue to assist with the aforementioned litigation.

To date (through June 30, 2023), there has been no spending incurred under Agreement No. 22-9911, and the Agreement has a remaining authority of \$150,000. Additional compensation of \$988,625 is now necessary for continued HPEC litigation support for a mediation and preparation for trial set for November 14, 2023, including a summary judgment motion, further discovery motions, depositions, document review, and general case administration. Deputy City Attorneys have performed some of the work, but other work exceeds the expertise and resources of City employee staff.

#### **ENVIRONMENTAL ASSESSMENT:**

The proposed action is the approval of a First Amendment to Agreement No. 22-9911 between the Harbor Department and Nossaman, 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.

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**FINANCIAL IMPACT:**

Approval of the proposed Amendment would increase compensation authority under Agreement 22-9911 by \$988,625, from \$150,000 currently to \$1,138,625, as proposed. If the proposed Amendment is approved, then spending is anticipated to occur as follows:

<b>Fiscal Year (FY)</b>	<b>\$ Amount</b>
FY 2024	\$1,038,625
FY 2025	\$70,000
FY 2026	\$30,000
<b>Total</b>	<b>\$1,138,625</b>

FY 2024 funding in the amount of \$1,038,625 is available within Account 54410 (Legal Fees & Services), Center 0120, Program 000. Funding for future years will be requested as part of the annual budget adoption process, subject to Board approval. A funding out clause is included in the Agreement.

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CITY ATTORNEY:

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

TRANSMITTALS:

1. Agreement No. 19-3668 with Nossaman
2. First Amendment to Agreement No. 19-3668
3. Second Amendment to Agreement No. 19-3668
4. Third Amendment to Agreement No. 19-3668
5. Fourth Amendment to Agreement No. 19-3668
6. Agreement No. 22-9911 with Nossaman
7. Proposed First Amendment to Agreement No. 22-9911

FIS Approval: MB

CA Approval: SD



JANET KARKANEN  
Deputy City Attorney

APPROVED:

By

  
\_\_\_\_\_  
STEVEN Y. OTERA  
General Counsel, Harbor Department

APPROVED:

By

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