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DATE: DECEMBER 3, 2019

FROM: OFFICE OF THE CITY ATTORNEY

**SUBJECT: RESOLUTION NO. _____ - FIRST AMENDMENT TO THOMPSON
COBURN LLP LEGAL SERVICES AGREEMENT NO. 17-3547**

SUMMARY:

The Office of the City Attorney (Office) requests approval of the First Amendment to Agreement No. 17-3547 (First Amendment) between the City Los Angeles Harbor Department (Harbor Department) and Thompson Coburn LLP, for legal services regarding the San Pedro Bay Ports Clean Air Action Plan (CAAP) and federal Clean Air Act (FCAA) matters. The First Amendment increases compensation by \$150,000 for a maximum total compensation not to exceed \$300,000, with no change in term, which ends on January 16, 2021. Thompson Coburn will be the only firm performing legal services for the CAAP. The Harbor Department is financially responsible for payment for legal services rendered under Agreement No. 17-3547.

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 the First Amendment to Legal Services Agreement No. 17-3547 with Thompson Coburn LLP, to increase the compensation by \$150,000 for a maximum total compensation not to exceed \$300,000; and
4. Authorize the Executive Director and Board Secretary to execute and attest to the First Amendment; and
5. Adopt Resolution No. _____.

DISCUSSION:

Background - In 2006, the Harbor Department, together with the Port of Long Beach (POLB), adopted the 2006 San Pedro Bay Ports (Ports) Clean Air Action Plan, a groundbreaking environmental program to reduce air pollution from maritime freight related sources in the San Pedro Bay (heavy duty drayage trucks, terminal yard cargo handling equipment, ocean-going vessels, locomotives and commercial harbor craft). The CAAP has been updated in 2010 and most recently through the 2017 CAAP Update adopted in a joint meeting of the Boards of Harbor Commissioners of the Ports of Los Angeles and Long Beach (Boards) on November 2, 2017.

Need for Counsel and Scope of Work – The CAAP is a high level planning document containing goals and strategies for emission reduction by the maritime freight related sources at the Ports, which will require further specific Board actions (e.g., programs, tariffs, contracts, leases and CEQA mitigation) in order to implement. The 2017 CAAP Update goals are similar to those found in the clean air regulations of state and regional air agency regulators, such as the South Coast Air Quality Management District's (SCAQMD) 2016 Air Quality Management Plan (AQMP) and the California Air Resources Board's (CARB) California State Implementation Plan (SIP). SCAQMD and CARB have also proposed potential future regulations affecting the Ports such as the CARB Heavy-Duty Low Nox regulation, and Ocean Vessels At-Berth Control Measure. Pursuant to Los Angeles City Charter Section 275, the Office of the City Attorney determined in 2017 that outside counsel legal services are needed to assist it with implementation of the CAAP, regulatory advice under the FCAA and other applicable federal and state laws as mentioned above.

Existing Contract - On December 14, 2017, the Board approved Agreement for Legal Services No. 17-3547 with Thompson Coburn, who was selected from the Office of the

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City Attorney's competitive selection process using a Request for Proposals (RFP). Thompson Coburn was selected because of its specialized legal expertise and relevant experience performing legal services in the areas of environmental law, FCAA and the Shipping Act, as well as experience representing the Harbor Department in the original 2006 CAAP. Agreement No. 17-3547 (Transmittal 1) has a current term of three years expiring January 16, 2021, with maximum compensation not to exceed \$150,000.

Under the 2017 RFP, two additional firms (Loeb and Loeb and Meyers Nave) were also approved to provide legal services for the CAAP however due to the nature of work and expertise required to date, the majority of the legal work has been provided by Thompson Coburn. Although each of the original three firms on the CAAP on-call panel had contract authority of \$150,000, Meyers Nave has incurred \$0, and Loeb and Loeb has incurred \$103,193 through October 2019. Based on the specific legal assistance needed, firm expertise and costs, during the period of November 1, 2019 to January 16, 2021, the remaining work for the CAAP will continue to be completed by Thompson Coburn. For this reason, the Office of the City Attorney requests that the Board approve a First Amendment for only Thompson Coburn. The proposed First Amendment for Agreement No. 17-3547 with Thompson Coburn adds additional authority of \$150,000 while there is no recommended FY 20-21 budget allocation for Meyers Nave and Loeb and Loeb.

Proposed First Amendment – Thompson Coburn has provided legal services related to the CAAP and provided regulatory advice since 2018 and as of October 31, 2019, Agreement No. 17-3547 has remaining unspent compensation authority of approximately \$48,515. The Office of the City Attorney requests that the Board approve the First Amendment to add additional authority of \$150,000 for a total compensation not to exceed \$300,000, with no additional term. The additional funding provides legal assistance for several matters anticipated in the next year. These include the CAAP tariffs advice, AQMD rules, ocean vessel at-berth regulations and advice for the Shipping Act.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of a First Amendment to Agreement No. 17-3547 to increase compensation for ongoing legal services for CAAP matters, 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:

The proposed action is for the approval of a First Amendment to Agreement No. 17-3547 to increase compensation by \$150,000 to a maximum not to exceed \$300,000. Funding in the amount of \$117,084 has been included in the approved FY 19-20 Operating Budget within the Harbor Department City Attorney's Office Account No. 54410, Division No. 120 and Program No. 000. Funding in the amount of \$88,700 will be requested as part of the annual budget adoption process in FY 2020-21 within the Harbor Department City Attorney's Office Account No. 54410, Division No. 120 and Program No. 000. Funding for future years, if necessary, will be requested as part of the annual budget adoption process. A funding out clause is included in the Agreement. This clause stipulates that if, in any subsequent fiscal year, funds are not appropriated by the City for the work required by the Agreement, then the Agreement shall be terminated. However, the termination would not relieve the parties of liability for any obligation previously incurred.

The proposed appropriation for Thompson Coburn is detailed below:

Firm	FY 17-18	FY 18-19	FY 19-20	FY 20-21	TOTAL
Thompson Coburn	\$29,315	\$64,901	\$117,084	\$88,700	\$300,000

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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. 17-3547 with Thompson Coburn
2. First Amendment to Agreement No. 17-3547

FIS Approval: MB (initials)

CA Approval: JMC (initials)



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Assistant General Counsel

APPROVED:

By Janna B. Sidley
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General Counsel, Harbor Department

APPROVED:

By Mark Blewett
EUGENE D. SEROKA
Executive Director

Author: Joy M. Crose
Board Meeting: Dec. 19, 2019